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TO THE

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OF THE

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ON

EMERGENCY DISPUTES SETTLEMENT

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INTRODUCTION

The Subcommittee on Labor and Labor-Management Relations has been studying the problem of emergency disputes, in one form or another, for the last 2 years. As an additional aspect of its investigation, I asked Dr. Gustav Peck to prepare a report on the subject. Dr. Peck is the senior specialist in labor for the Library of Congress. It was understood that this was not to be a policy report but rather an exploration of the implications of various proposals to deal with this insistent problem.

As is our rule with respect to reports of this kind, no member of the committee or of the subcommittee is committed to the selection of facts or such conclusions as may be contained in the report. It is offered solely as background information for the United States Senate by a qualified scholar in the field.

HUBERT H. HUMPHREY,
Chairman.

EMERGENCY DISPUTES SETTLEMENT

A REPORT

Prepared for the

Subcommittee on Labor and Labor-Management Relations

of the

Senate Committee on Labor and Public Welfare

by

Gustav Peck

Senior Specialist, Labor

December 1952

EMERGENCY DISPUTES SETTLEMENT[1]

Collective Bargaining Subject to Law

Under collective bargaining, disagreements of the parties which appear to be final are tested by work stoppages before the parties are willing to make further compromises and adjustments in order to settle the dispute. Such stoppages do not terminate the employment relationship; they may be said to be a "continuation of bargaining by other means." Since the product or the service which is the end result of the enterprise is needed by its customers, many will be inconvenienced or will suffer losses or hardship when the supplies or services are cut off. This is a price paid for the function of the joint determination of the terms and conditions of employment by the parties most at interest.

That there could be such stoppage of production is the risk of every effort at collective bargaining. In only a very small percentage of cases do negotiations actually break down into a work stoppage before an agreement is made; but the possibility of a strike or a work stoppage, either because the employer will not meet the demands of the union or the union will not accede to the employer's terms, exists in every collective-bargaining negotiation. It is the known cost of a strike to the parties which generally results in the avoidance of the stoppage by acceptable compromises. Even when a strike occurs, its cost to the parties remains the most effective deterrent against its prolongation.

It is no disparagement of collective bargaining to say that it rests on the right to use the economic power of the strike or the work stoppage to determine or to compromise unresolved issues between unions and managements. Collective bargaining presupposes relatively equal strength of the parties so that each could inflict hard-to-take damage on the other. The appreciation of the power of the other side makes for a respectful inspection of the demands and position of the parties and facilitates the compromises which lead to adjustment and agreement.

Since the days of our industrial revolution the executive department, the courts, and the Congress have intervened in industrial disputes in a variety of ways. Executive intervention has been by means of investigation, mediation, publicity, and the taking of definite steps which affected various disputes, such as proposed legislation, injunctions, or the threat or the actual use of Federal troops to end a strike. The Conciliation Service was established in the Department of Labor in 1913 and it has concerned itself with tens of thousands of labor disputes since that time. Much additional mediation, fact-finding and strike-handling machinery was established by the executive department during and since World Wars I and II. In addition,

[1] Prepared by Gustav Peck, senior specialist, labor, the Library of Congress.

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the courts have regulated union activity by their interpretation of lawful and unlawful action.

Legislation dealing with industrial relations has covered a wide area in which there was felt to be a public interest—the regularity and the media in which wages are paid, mechanics' liens, statutory minimum wages, maximum hours, penalty overtime, Sunday closing laws, prohibitions and regulations to protect health and safety, and a variety of social insurance measures. The Norris-LaGuardia Act of 1932, the Wagner Act, and the Taft-Hartley Act laid down wide controls over the relation of the parties in industrial relations and industrial disputes. At the same time the major avowed purpose of these acts, as expressed in their preambles, was to facilitate the processes of negotiation and collective bargaining.

Under the Norris-LaGuardia Act, the Wagner Act, and the Taft-Hartley Act, and their interpretation by administrative agencies and the courts, collective-bargaining rules have been adopted which have circumscribed the contest between the parties. As a result the freedom to strike in an industrial dispute has been broadened, but strikes for certain defined purposes are declared illegal. Certain practices of both management and unions are proscribed; negotiation procedures are regulated in general ways; and certain issues have been determined by law as not being within the power of the parties to alter. Outside of such prescribed limitations, the right to strike and to resist to the point of suffering a strike remains an inherent and vital part of the collective-bargaining process.

Some have argued that collective bargaining is not really free when legal conditions are imposed on the parties because, without legislation of any kind, the strength of the parties would have resulted in different solutions and determinations than those stimulated by law and in some cases fixed by law. However, collective bargaining, like private enterprise, is a creature of law and is regulated by law. In the evolution of the law in industrial relations, rights, duties, and negotiating procedures have been determined as in the public interest, although people will have different opinions as to the value, fairness, or efficacy of the law itself. Within these limitations the law enforces collective bargaining. The law compels bargaining under prescribed legal conditions, but it does not compel agreement on the terms and conditions of employment; about these the law is silent. Sometimes the parties do not come to agreement and they will not modify their positions to make agreement possible until the cost of a work stoppage has served to alter their previous position.

Notwithstanding all the encomiums bestowed on collective bargaining as the best procedure for arriving at the terms and conditions of employment—including the limitations imposed by labor law, of course—the public has been fearful of the consequences of collective bargaining resulting in disagreement and consequent work stoppages in those activities which are indispensable to the life and safety of the community. Activities like the public services and transportation, universally used utilities like electricity, gas, and water supply, and industries like coal and petroleum and steel are so indispensable in the conduct of all our lives that prolonged stoppages of production, particularly over a wide area or Nation-wide, are insufferable to those who depend on the use of the product, facility, or service. During

periods of war or national emergency in which we have lived for all but three or four of the years since the Wagner Act became effective, other industries became equally important—aircraft, shipbuilding, atomic energy plants, electronics, munitions of all sorts and their vital components. We rely on collective bargaining, but we hope and pray that negotiations will not break down into a work stoppage in production which is vital to the safety and defense of the Nation.

As experience and statistics show, collective bargaining results in agreement without a work stoppage in most of these industries most of the time. But where collective bargaining results in failure to reach compromise and agreement in these vital industries, a variety of measures have already been taken to avoid or prevent a work stoppage. This may be done through mediation, arbitration, legislation, special machinery, the emergency power of the President—all accompanied by a variety of appeals to the parties from high or impartial sources to come to an agreement without a work stoppage. Whatever laws, rules, regulations, and procedures are required for normal collective bargaining are further elaborated or strengthened to handle these disputes in which stoppages are sought to be avoided. It is not left exclusively to the parties to determine when they may conclude the negotiations and resort to or suffer a strike. They must carry on and follow the additional procedures required by law. These requirements are of various types and of different degrees of limitation on the complete freedom of the parties to determine the issues for themselves. They all involve to some degree limitations on the complete freedom of action of the parties. Both the laws and proposals to be considered range from procedures which extend the period of negotiation to compulsions on both industry and labor which further restrict their freedom to do as they want to with their labor or their property.

A democratic society must give the greatest scope to the voluntary methods of mutual self-help which is at the heart of the collective-bargaining process. Few, if any, doubt that agreement is preferable to any form of compulsion, and that is the assumption underlying this analysis and report. It has been said that a democratic society cannot risk exposing its comparative impotency when it undertakes to use measures of compulsion. It can also be said that any government cannot be without resources to prevent disaster to the community if the life of the community is endangered. This remains the most basic function of all government. The forms of intervention reviewed in this report reveal alternative methods of obtaining both a continuation of the production which the community needs and relative justice to the parties directly at interest, as well as a mixture of success and failure in promoting collective bargaining and agreement by the parties. The quest for a better solution is an indication that no one method has proved satisfactory in all situations. At the same time it also indicates that our society cannot abandon the necessity of protecting itself against breakdowns in even so salutary an institution as collective bargaining.

The report attempts to deal with these matters under the following headings:

1. The nature of the "emergency" which requires an extraordinary intervention in the process of collective bargaining.

2. The formalizing of procedures of mediation, voluntary arbitration, and emergency board recommendations under the Railway Labor Act.
3. The national emergency dispute provisions of the Taft-Hartley law.
4. Informal fact-finding and wage-stabilization procedures.
5. Making mediation more effective.
6. Government seizure and its problems.
7. Compulsory arbitration.
8. Limitations on the scale of bargaining.

EMERGENCY DISPUTES

According to the Statistical Abstract there are about 4 million nonagricultural firms in operation in the United States. If collective bargaining results in a dispute between a local grocer and his half-dozen employees, or between the Tip-Top Restaurant and its 50 employees, or in the Eureka Suspender Co. and its 100 employees, or even in the Giant Manufacturing Co., or the American Chain, or the United States Co. with their thousands of employees making or distributing household equipment or containers or textiles or cigarettes or automobiles, it is expected that the parties would fight it out by means of a work stoppage, if that is to their interest. Their competitors would continue to produce or distribute these items and would be happy to be able to enlarge their sales. Moreover, even complete deprivation of the opportunity to make new purchases of these items for periods lasting as long as most strikes is an endurable public hardship.

With the growth of unions and the spread of collective bargaining since 1935, larger sectors of our economy have been brought under the jeopardy of conscious interruptions of production, not because business is bad or demand has declined, but generally at a time of active business and intense demand for the products. The use of the strike weapon in collective bargaining assists in obtaining equality of bargaining power, but it exposes unions to a serious disadvantage in its relations with the public. A conscious and self-determined interruption of production when business is good or a cessation in the production of a commodity or service we have learned to take for granted may appear as a callous disregard of the needs of the public or of a properly functioning economy. In our elaborate division of labor most companies are suppliers of other companies as well as markets for still other companies. Industries such as coal, steel, copper, public utilities, and railroads are the very lifeblood of the economy as a whole and many industries cannot carry on for long if these materials or services are not forthcoming. Work stoppages in one industry result in unemployment in other industries which transport or use the supplies or furnish them materials. The inconvenience and cost to the public have received greater notice and attention as collective bargaining and its hazards of interrupted production has spread throughout the enonomy. At the same time there is no practical way to insulate the parties to an industrial dispute and to direct the cost of work stoppages to them alone.

Three developments in the past two decades have made interruptions in production more difficult to endure. One is the extension of

unions and collective bargaining into vital industries and services—petroleum, chemicals, steel and nonferrous metals, electrical equipment, public utilities. In a number of these industries a handful of companies control the bulk of the output; and unions have matched this power with equally large bargaining units. In others, union organization is on a Nation-wide basis and these unions have shown that they can effectively close down whole industries. The extension of collective bargaining into the mass-production industries and into vital industries, the size of the companies in such industries and the extent of the bargaining units in these industries have made it possible to shut down whole industries in industrial disputes. These industries have emergency characteristics which are alleviated only by the existence of adequate stockpiles or by the return to work and production on some basis.

The second overriding consideration is the existence of a more or less continuous national emergency which has required uninterrupted production in the basic industries as a condition of our survival as a Nation. Under these conditions it seems almost frivolous to advocate that a threatened strike should take its course in an industry or establishment whose output is needed for the national safety. Fearful of the consequences of any interruption of production, we turn to devices which it is hoped will stop strikes.

Another factor arising out of the more or less continuous emergency situation has been the necessity of imposing wage and price controls in the effort to attain "economic stabilization." Although believed to be necessary to control inflationary forces, wage and price controls are severe limitations on the freedom of collective bargaining. It is remarkable how much the steel situation in 1952 duplicated the course of events following a similar dispute at the end of World War II. In both periods the industry took the position that it could not grant substantial wage increases without recouping some of its additional costs from higher prices. In both periods the agencies of the Government attempted to hold the price line while a flexible wage policy was worked out experimentally. But—as it happened—in both cases, without such assurance, the steel companies balked and were willing to suffer a strike. Without considering at all the merits of the contentions of the managements of the steel industry, it is clear that their ability to negotiate an agreement with the United Steelworkers would have been much greater if they had had freedom of action with respect to prices.

Price control by the Government means that a basic element in collective bargaining has been removed from control by management. What happens instead is that the union bargains with the management over wages and other labor costs, while the management attempts to bargain with the Government about how it is to meet some or all of these increased costs. Collective bargaining under these conditions is exasperating to the parties. The union charges management with "refusal to bargain," while the management, to preserve its position, attempts to bargain on two fronts and does not feel able to settle on either front without a settlement on the other. Also, as will be seen in instances later reviewed, wage formulas by a wage-stabilization agency have sometimes prevented agreement and resulted in a work stoppage where the parties, if left to their own devices, might have agreed. In the coal negotiations in the fall of 1952 the parties actually

had come to agreement, but this was set aside by the Wage Stabilization Board as not conforming with wage-stabilization policy, and a stoppage ensued.

So, the public interest in three different areas—free collective bargaining, continuous production in certain vital industries, and wage and price controls—do not always work together to facilitate agreement. The public wants desperately to avoid, and in some instances it regards as intolerable, a stoppage in a vital industry, even though it arises out of lawful and permissible objectives and tactics. If it cannot take the consequences of an interruption of production or of freely determined wage and price adjustments, it has attempted to subject the bargaining process to further control and thus to put limits on the freedom of collective bargaining when such freedom would otherwise result in a work stoppage. It has provided more and more facilities and procedures which it hopes will prevent or postpone a work stoppage and mayhap bring the parties to terms. It has taken over companies or industries and it has made final decisions in the hope that the parties will go along. All these techniques are considered in the subsequent parts of this report, which review the efforts that have been made and proposed to deal with so-called emergency disputes.

There seems to be no formula which can surely determine when adverse public effects of actual or prospective work stoppages must be classified as "emergency disputes." In some of the State laws the line is rather loosely drawn to cover the general welfare, while in national legislation thus far the law is drawn to limit such intervention to stoppages where the national health and safety is jeopardized. But, however the legislation is drawn, the use of the additional procedures is not automatically invoked, the final decision on whether an emergency exists being left to the Chief Executive.

THE RAILWAY LABOR ACT

The public interest in uninterrupted railroad service is so extensive and vital that legislation to prevent interruptions of service has long been attempted. The Railway Labor Act, originally passed in 1926, is a culmination of 60 years of experience with Federal legislation to govern labor relations on the railroads. The act had the support of the operators and the unions. It guaranteed the right of collective bargaining and prescribed methods and procedures for handling various types of disputes. Even though the act was to apply originally to only one industry, it distinguished among different kinds of disputes and provided different methods and agencies for handling them.

The Railway Labor Act imposed a positive duty "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions." These agreements were to be filed with the National Mediation Board. They were not to be changed except by conference and agreement after 30 days' notice by either party. While such conferences are being held and until the controversy has been finally acted upon, rates of pay and working conditions may not be altered. Disputes involving grievances and the interpretation and application of agreements which cannot be settled by the parties in direct conference are referrable either to local or system adjustment boards or to the National Railroad Adjustment Board.

The decisions of the national board are binding by law upon both parties. The duties or responsibilities imposed by the act may be enforced by appropriate court writs.

This legal guaranty of rights and duties and the machinery provided for their implementation have resulted in a settlement of most of the disputes on the railroads by mutual agreement. Where disagreement persisted there was provided mediating and adjusting agencies designed to deal with different types of disputes—elections in representation disputes, mediation by the National Mediation Board, voluntary arbitration, and investigation by emergency boards appointed by the President of the United States. After the creation of an emergency board and for 30 days after it has made its report to the President, no change in conditions may be made except by agreement of the parties.

The railroad industry is so vital to our society that the applicability of emergency-dispute techniques was clearly recognized even in peacetime. The Railway Labor Act provides that if a dispute is not adjusted after mediation efforts by the Board and if, in the Board's judgment, it threatens to interrupt interstate commerce to a degree which would deprive any section of the country of essential transportation service, the Board shall notify the President and he may create an emergency board to investigate and report to him. There is no legal compulsion behind the recommendations of an emergency board, and the use of injunctions or seizure of the property are devices altogether beyond the requirements of the Railway Labor Act. Under the law the parties are free to engage in a work stoppage 30 days after the report of the emergency board has been filed. However, it was expected that the fairness of the recommendations of a Presidential emergency board would work to induce the disputants to accept the terms recommended or some variant resulting from further negotiation.

Collective bargaining on the railroads is channeled in certain courses by means of waiting periods, the maintenance of status quo, and the compulsory arbitration of grievances. The right to strike without full consideration and the use of the machinery provided was restrained. The restraint was complete in interpretation cases and limited to delaying action in mediation cases where changing terms and conditions of employment were involved. But, even where the machinery of the National Mediation Board is brought into use, it functions to promote and extend the process of adjusting differences by conference between and with the parties directly concerned. The whole experience has been that, when mediation services are extended, both parties cooperate with the Board in its efforts to assist them in composing their differences.

For many years the terms and procedures of the Railway Labor Act were given credit for success in maintaining uninterrpted railway service. With respect to representation cases and the final determination of grievances, the record has remained outstanding, even though there have been long delays in the handling of grievances and some strikes and eventual appointment of emergency boards over the handling of grievances. There have never been any strikes in violation of waiting periods even though the Railway Labor Act depends on voluntary compliance and makes no provision for compulsory methods or injunctions. However, in recent years the machinery

of the Railway Labor Act for handling disputes arising out of economic demands or for changes in rules or on account of the accumulation of grievances has in a number of cases been exhausted and work stoppages have either become imminent or have actually occurred, and recourse was had to other means outside the law, including further Presidential intervention, seizure, and injunctions.

Beginning with the emergency board of 1941 something new has had to be added to recommendations of many emergency boards to reach an amicable settlement, and in this process railroad service has sometimes been interrupted. Disagreement with recommendations of emergency boards is no violation of the Railway Labor Act, and in the 1941 cases the unions may have felt that they had more than usual justification to object to the small amount of the increase recommended, to the board's ignoring historic wage differentials, and to the temporary status accorded the recommended wage increases. Anyway, when the unions refused to accept the board's recommendations and indicated an intention to strike, the President intervened, reconstituted the emergency board with the directive to reappraise its original findings in the light of changing conditions. Through mediation by the board a settlement was then obtained containing larger increases than originally recommended, recognizing existing differentials, and making such increases permanent.

In 1943, in a complicated case which involved the Government's wage-stabilization program, the companies and the unions were in agreement, but the officials in charge of the wage-stabilization program refused to approve the agreements. There followed direct intervention by the President and, as the indicated strike date approached, Government seizure of the railroads. The dispute was finally settled by further mediation and negotiation and after the Director of Stabilization found it possible to approve increases higher than those he had rejected before. This particular failure of the Railway Labor Act to maintain operation while negotiating mutually satisfactory agreements can be laid directly to the interference of an outside agency whose existence was not contemplated in the Railway Labor Act.

In some of the later cases one or another union accepted the recommendations of emergency boards while others did not. In May 1946 the Government seized the railroads again to forestall a strike by the engineers and trainmen after the carriers had accepted a White House proposal for an increase greater than had been recommended by the emergency board. When this was turned down by the unions and it appeared to the President that there would be a strike despite Government seizure, he addressed the Congress directly and recommended temporary legislation which would permit the Government to draft into the Armed Forces those who strike on seized property. Among his other proposals were injunctions against those who incite or encourage such strikes, strikers' loss of seniority rights, criminal penalties against employers and union leaders who violate the provisions, a wage scale to be fixed by negotiation or by arbitrators for the period of seizure, and Government retention of the profits earned by seized properties. These proposals were embodied in a bill which passed by a voice vote in the House but was turned down in the Senate. While the President was addressing the Congress he was

informed that the unions had accepted his terms of settlement and had terminated their strike.

A year later the different demands of the operating and nonoperating unions were advanced. Without the intervention of the National Mediation Board the carriers and the conductors and trainmen came to agreement, while the engineers, firemen, and switchmen did not. In March of 1948 an emergency board recommended the same terms as had been agreed to by the conductors and trainmen. The unions did not accept and announced a prospective strike for May 11, 1948. The White House continued its mediation but finally again seized the roads on May 10. Since it appeared that the intended strike might not be abandoned, the Government obtained an injunction. The Government refused to negotiate under its seizure with the three operating unions; but Dr. Steelman, the President's Assistant, continued his mediation efforts. The three operating unions finally accepted substantially the emergency-board recommedations, and seizure was lifted on July 9, 1948.

Later that year all the railroad unions obtained another increase in line with the third-round pattern of industry generally. Agreement was reached by collective bargaining and without the intervention of emergency boards.

In 1949 the rejection by the engineers and firemen of an emergency-board recommendation regarding the need of an additional man on multiple-unit Diesels was followed by a strike of 6 days' duration on parts of selected railroads.

In March 1950 the industry adjusted to a 40-hour week for the nonops as a result of an emergency-board proposal, which increased wages and rates 20 percent to maintain 48-hour pay and gave the carriers 9 months during which to adjust to the shorter workweek.

The next year the operating unions pressed their demand for a reduction in hours, plus wage increases and changes of two important rules. The recommendations of the emergency board were accepted by the carriers but not by the unions. The switchmen alone among the operating unions initiated a strike on June 25, 1950, on five railroads. To avoid the danger of Government seizure they abandoned their strike on four of the roads after 12 days but continued it on the fifth road. The Government then seized that road—the Rock Island—and, in view of the strikers' reluctance to return to work, an injunction was obtained prohibiting the continuation of the strike. This also deterred the other operating unions which had been considering strike action.

Dr. Steelman's efforts at mediation did not bring about an actual settlement of this dispute between the four unions and the carriers. In the meanwhile there were a number of short strikes on terminal lines. When a Nation-wide strike was called for August 28, the Government again seized the railroads as of August 27, 1950.

In September the switchmen and yardmasters entered into agreements embodying the terms of the carriers' proposals, which contained some terms more acceptable than the emergency board's earlier recommendations.

The increase in the cost of living and in wages generally following the opening of the Korean war resulted in further wage demands by the railway unions. What Dr. Steelman thought was a general agree-

ment regarding hours, wages, and rules was worked out a few days before Christmas; but the terms were repudiated by the unions as unsatisfactory on many grounds. In the meanwhile the trains ran on schedule under Government seizure and injunction, with only occasional short strikes ended by a determined announcement by the Army that employees who failed to show up for work on February 10, 1951—without a good excuse—would be fired. Pending a final settlement, the Army put partial wage increases into effect at the same time.

On May 25, 1951, the trainmen's union accepted terms further modified from the earlier Steelman "agreement." This was 26 months after the inception of the dispute. The other operating unions involved did not accept these or similar terms until another full year later, with "some disappointment," as their spokesman said, "that there are no better alternatives under one-sided Government seizure and rule by labor injunctions."

It is seen then that in the past decade the procedures of the Railway Labor Act have frequently been supplemented by White House intervention and negotiation and by seizure and injunctions to avoid strikes. Since March 1949, when the last major dispute over wages and working rules got started, short strikes and "sick" walk-outs have occurred in 1950, 1951, and 1952. The railroads of the country were under technical control by the Army between August 1950 and May 1952. More or less continuous operation of the railroads has been obtained not only as a consequence of collective bargaining and the provisions of the Railway Labor Act but also by the use of the devices of seizure and injunction. However, seizure and injunction are instrumentalities not within the terms of the Railway Labor Act. What losses would have been incurred if reliance had been placed exclusively on the provisions of the Railway Labor Act cannot be determined.

In its 1950 annual report, the National Mediation Board remarked:

> There are situations from time to time where the employees express a deep concern that the employer has operated under a feeling of assurance that they would be protected by the Government against any use of their economic power, and that such feeling has operated to make negotiations an empty gesture. On the other hand, the carriers have from time to time expressed the feeling that real negotiations could not be conducted with employees because they desired to force the use of section 10 and accept the provisions of emergency-board reports which they considered favorable and reject such portions they may deem unfavorable. If the feelings of the respective interests have factual substance, both are contrary to the spirit and intent of the law.

In its annual reports in recent years the Board again and again has referred to the procedures of the act as capable of handling all disputes without interruptions of service but deplores the failure to use all the procedures as the effective source of a deterioration in industrial relations and the increase in stoppages in recent years. In the last report issued, for the year 1951, it says:

> The value and efficacy of the principles of the Railway Labor Act as applied to the vast majority of disputes on the individual carriers, when not under the pressure of a strike threat, have been amply demonstrated during the past 17 years of the life of the present Board. The Board's mediatory services are eagerly sought by both parties in such instances, with the full anticipation of being able to resolve the issues amicably under the orderly processes of the act. This experience supports the feeling of the Board that full and conscientious utilization of the various steps of adjustment provided in the law will also succeed in the majority of cases involving national issues.

The report goes on to say that "a grand total of 3,637 disputes were disposed of during the 17-year period since the passage of the 1934 amendments creating the present Board. This performance should bring all to a fuller realization of the fact that the principles on which this law was founded are still basically sound and vigorous, and need only a more wholehearted utilization to minimize the difficulties through which the industry has been passing during the past few years."

Speculation regarding the factors in the decline in the efficacy of the Railway Labor Act runs in terms of the relative decline in the status of the railroad industry, including the earning power of the roads and the earnings of the workers, Government wage stabilization policies, the slowness in adjusting railroad rates to increases in costs, the complexity and importance of working rules in relation to long-time declining employment on the railroads, fierce interunion rivalry, and White House intervention. Since it appears that we will not in fact tolerate a national railroad strike, intervention by the White House has become inevitable whenever any of the unions have refused to accept an emergency board report and have fixed a strike date. In every case where an emergency board has made recommendations and the White House has subsequently intervened, a settlement was eventually obtained containing more favorable terms for the union than those recommended. The unions have pushed toward the procedure available to them beyond the Railway Labor Act and even then they have not felt that they obtained their just desserts. The persistent use of the procedures of the Railway Labor Act has pulled it down from its function as an effective means of exhausting the routes to settlement to that of a time-consuming prelude to a show of economic force and White House attention, where settlement is finally made. In recent years the "effective remedy" for interruptions of service on the railroads has been Presidential mediation, seizure, and injunction, made possible by the continuation of wartime legislation, rather than the procedures of the Railway Labor Act by themselves. The unions are opposed to seizure and injunction and want to continue to function under the Railway Labor Act. Certain spokesmen for the railroads have testified in favor of a Senate bill which would have imposed a system of compulsory arbitration.

EMERGENCY PROVISIONS OF THE TAFT-HARTLEY ACT

The Taft-Hartley Act made substantial changes in the law of labor relations. It determined that a number of matters, like the closed shop, are not subject to collective bargaining. It determined that other matters, like pensions, union shop, and so forth, could be bargained about only with the limitations included in the act. It required bargaining by both parties. It required a 60-day notice before an old contract was terminated, thus assuring time for negotiation. It gave the Federal Mediation and Conciliation Service authority to mediate on its own intervention if necessary. The resort to a work stoppage as a test of bargaining strength was not interfered with after these procedures had been pursued, except where the President of the

United States had come to the conclusion that there would be a danger to the national health and safety in an interruption of production. If he so finds, he may appoint a board to investigate and report the facts.

In the report the board reviews the demands of the union and the offers of the company involved. By calling the parties before it, the Board is enabled to crystallize the issues and the obstacles to agreement. A board of inquiry under the Taft-Hartley Act may not make recommendations, as this was regarded as too much of a step in the direction of compulsory arbitration. However, facts and findings can be presented in such a way as to high-light the remaining differences and indicate possible compromises. As we have seen, under the Railway Labor Act emergency boards may make recommendations, and these have not proved to be an open sesame to agreement or to compulsory arbitration. A much disputed provision is that for a vote on the employer's last offer. This has been regarded by the unions as an effort to split their ranks and has had no discernible influence in settling disputes.

The President is empowered to authorize the Attorney General to seek to obtain an injunction if the strike is on or if there is an intention to strike. Such an injunction is limited to 80 days, or less if the dispute is settled before 80 days.

The purpose of the injunction under the Taft-Hartley Act is not to prevent strikes at all costs, but rather to prevent a work stoppage from taking place in an industry where a strike, in the judgment of the President of the United States, would imperil the national health and safety until a final period of 80 days has been devoted to intensive negotiation, mediation, fact-finding, and other efforts to reach a negotiated settlement. Under the Railway Labor Act a similar waiting period is obtained under the terms and procedures of the act; but no injunction procedure is provided. It is noteworthy that while injunctions have been resorted to in railway disputes after Government seizure, there have been no strikes on the railroads in violation of waiting periods.

The Taft-Hartley Act is more restrictive than the Railway Labor Act in one other particular. While the Taft-Hartley Act provides that the injunction be withdrawn after a period of 80 days and the parties are freed to exercise their rights of economic coercion, section 210 empowers the President to make a report to Congress including recommendations for appropriate action. This implies that further crisis action would probably be taken. The President has actually never taken action under section 210 of the Taft-Hartley Act, although he has requested, but not obtained, legislation with respect to strike control for railroad workers beyond any provision of the Railway Labor Act as well as seizure power with respect to the steel dispute of 1952. In addition, the railroads have been seized a number of times under a 1916 law which had remained in effect.

The Taft-Hartley Act thus attempts to assure that there will be time for collective bargaining, for mediation, and for fact-finding in disputes judged by the President as likely to imperil the national health and safety. Injunctions preventing stoppages are permitted in the discretion of the President. After the fact-finding report is made to the President, the employees are given an opportunity to vote on the acceptance of the employer's last offer. If the dispute is not

settled within 80 days, the injunction would have to be dismissed and the strike permitted to proceed, unless in the meanwhile Congress legislated otherwise.

In the 5 years during which the Taft-Hartley Act has been in effect, the emergency provisions have been called into use only nine times—seven times in 1948 and once each in 1950 and 1951. In six of these nine disputes injunctions to delay work stoppages were also obtained. How effective have the requirements of the Taft-Hartley Act been in the handling of these major disputes?

What follows is a summary of these nine cases, abridged from the reports of the Federal Mediation and Conciliation Service.

Atomic energy dispute

"* * * In this dispute the procedures of the act relating to national emergencies were exhausted. A ballot of employees on the employer's final offer, conducted by the National Labor Relations Board, resulted in a vote of 771 to 26 against its acceptance. The injunction was discharged on June 11, 1948. During the period of the injunction order the Service brought the parties together on numerous occasions in an effort to induce them to reach a settlement. These efforts were intensified during the last days of the injunction period when numerous meetings were held. Apparently the imminence of the discharge of the injunction did not have the effect of producing a settlement. Immediately after the discharge of the injunction the parties were again convened in joint session by the Service, and remained in continuous negotiations for over 50 hours. These negotiations finally produced an agreement which was ratified by the union membership on June 15, 1948. Thus, although the utilization of the national emergency provisions of the act, in the opinion of the Service, appear to have averted a stoppage early in March 1948 in a facility whose continued operation was undoubtedly essential to the Nation's welfare, it cannot be said that the period of the injunction contributed materially to the final settlement, if at all. That settlement was 'bargained out,' with the aid of the Service, and without utilization of extraordinary statutory procedures."

Meat-packing dispute

The President appointed a board of inquiry on March 15, 1948, the day before the date set for a Nation-wide strike, after all efforts of the Mediation Service to negotiate a settlement had failed and the union had refused to arbitrate the wage issue, as requested by the President, except on the basis of a specified amount. The board convened on March 17, conducted open hearings on 7 days, and filed a report on April 8 after being granted an extension from the April 1 deadline.

Negotiations were renewed after the report was filed, but despite determined mediation efforts the strike did not end until the latter part of May in some plants and not until the beginning of June in others. The employeees returned under conditions dictated by the employers with the wage increase offered at the beginning of the strike.

The injunction procedures of the act were not invoked in this case, presumably because the scarcity of meat products generally anticipated when the strike was first called and the board of inquiry was appointed did not materialize.

First bituminous coal dispute

This dispute over the activation of a welfare and retirement fund was between the United Mine Workers of America and coal operators and associations signatory to the national bituminous coal wage agreement of 1947. The welfare fund created by that agreement was to be disbursed in accordance with a program of administration approved by a board of trustees. The trustees were unable to agree upon a plan of distribution and administration and Mr. Murray, the trustee selected by the management and union designees, resigned on January 15, 1948. The inability of the remaining trustees to agree upon a plan of distribution and the continued failure to make payments from the fund resulted in a work stoppage. Shortly after the commencement of the stoppage the Service called the representatives into joint meetings and submitted a plan for resolution of the issue; this was not accepted by the union.

The President appointed a board of inquiry on March 23, 1948. The report was filed on March 31, stating that a stoppage in the mining of coal had "pre-

cipitated a crisis in the industry and in the Nation as a whole." An injunction order was issued on April 3 by the United States District Court for the District of Columbia restraining the union from continuing the strike, which the court found to be in existence, ordered the union to instruct its members to return to their employment, and further ordered the union and the operators to bargain collectively. Subsequently, the court found that the union and its president had committed contempt of the injunction order and fined the former $1,400,000 and the latter $20,000. The miners ultimately returned to work and substantially normal production was attained on or about April 26.

Shortly after the injunction order was issued, Senator Styles Bridges was agreed upon as the third trustee. A majority of the trustees, Mr. Van Horn, the representative of the operators, dissenting, then approved a plan of distribution. The legality of their action was challenged by Mr. Van Horn. Summary judgment dismissing the suit was entered in favor of trustees Bridges and Lewis on June 22, 1948, and on June 23, the injunction order was discharged, the dispute over the distribution of the fund being at an end.

The telephone dispute (long lines)

Negotiations over a new contract were conducted up to and after the termination of the previous contract at midnight, May 8, 1948. In view of the fact that a strike vote had already been taken, the Director of the Federal Mediation and Conciliation Service proposed to the parties that they agree, for a reasonable period of time, to continue to observe all the terms and conditions of the expired contract excepting those which might require legal implementation. The union accepted and the company rejected this proposal. The union stated that the company's position gave it no alternative but to strike. It also stated publicly that it was willing to submit the issues to arbitration.

The President, after these facts were reported to him on May 14, issued his executive order invoking the national emergency provisions of the act and creating a board of inquiry on May 18. The Service continued its efforts to bring the parties into conference, and as a result of separate discussions with the parties it suggested to the board that it adjourn its hearing in order to afford the parties a further opportunity to bargain with the assistance of the Service.

The Service advised the board that the parties were willing to maintain the status quo excepting as to "maintenance of dues" up to and including June 7, and if no agreement was reached by then, the parties were to continue to operate under the terms of the old contract until June 14. The board of inquiry adjourned until June 8. The Service then called the parties into joint session and a settlement of the dispute was reached on June 14. This made it unnecessary for the board to take any further action other than to report to the President.

The Service observed that in this case the mere appointment of the board of inquiry had the effect of reestablishing the bargaining relationship that had ended by the failure of one party to give unqualified assurances that during a period of continued negotiations and until a new contract could be agreed upon the status quo of wages, and terms and conditions of employment, would be mtaintained.

Maritime labor dispute

Negotiations were conducted on all coasts commencing a considerable period of time in advance of the June 15, 1948, deadlines. At an early stage in these negotiations it became apparent that until a disposition could be made of the hiring-hall issue, little progress could be made toward a general settlement. The employer representatives stated that the hiring practices provided for in the collective-bargaining agreements must be altered to conform with the section of the Taft-Hartley Act making it an unfair labor practice to discriminate in regard to hire. The position of the unions with respect to the employers' demand was that the hiring practices were not in violation of the act, and should not be changed until it had been judicially determined that they were in violation of the act.

On June 3, 1948, the President issued an executive order establishing a board of inquiry, which convened on June 4, in two panels—one in New York and one in San Francisco. At the hearing on June 7–8 some of the unions complained of the lack of opportunity to prepare, and of the insufficient time within which to enlighten the board fully about the history, problems, and unique complications of labor relations in the industry. The board presented its consolidated report to the President, and he thereupon requested the Attorney General to apply for national emergency injunction orders in accordance with section 208 of the act.

Orders were issued on June 14, enjoining both the employers and the unions from encouraging and engaging in any strike or lock-out in the maritime industry or from making any changes in terms or conditions of employment other than by mutual agreement. The issuance of these injunctions averted for the statutory period the work stoppages which, in the judgment of the Service, would have occurred on all coasts on June 15, 1948.

After the issuance of the injunctions the Service continued its mediation efforts. On the Atlantic and Gulf coasts general settlements were achieved before September 1, the date of expiration of the injunction order. These settlements provided for the continuance of existing hiring practices pending judicial determination of their legality, and for wage increases and changes in certain working conditions. Settlements were also worked out with respect to the disputes on the Great Lakes. Negotiations on the Pacific coast were broken off late at night on September 1. The unions struck on September 2. The employer representatives immediately revoked all offers previously made and announced that they would not negotiate or enter into any agreement with a union, the officers of which had not signed the non-Communist affidavits. Negotiations continued, however, and agreement was finally reached; port and shipping operations were resumed during the week commencing December 5, 1948.

Second bituminous coal dispute

The dispute began on April 30, 1948, when the union notified all signatories that the 1947 agreement would expire on June 30, 1948, and that a conference would be held on May 18 to negotiate a new contract. On that date the union refused to recognize the Southern Coal Producers Association as a proper party to the conference. On June 4 an injunction was issued requiring the union to bargain collectively with that association. The conference was resumed with the association as a party on June 7.

On June 19, 1948, after the Director of the Federal Mediation and Conciliation Service had informed the President that an impasse had been reached because of disagreement over the activation of the welfare fund, the President declared that a national emergency existed within the meaning of section 206 of the act and appointed a board of inquiry, which convened on June 20. On June 22, while the board was still in session, a decision was handed down in one of the two suits instituted by Mr. Van Horn, trustee of the welfare fund, against the other two trustees. The action of Messrs. Bridges and Lewis in resolving to make pension payments on the basis set forth in their resolution of April 1948 was approved and Mr. Van Horn's complaint was dismissed. This decision cleared the way for bargaining on the other issues in dispute, on which no progress had been made until that time.

In view of these circumstances, the board postponed additional hearings, encouraged the parties to resume negotiations, and obtained from the President a short postponement of the date on which it was required to submit its report. Negotiations were resumed, and on June 25 the board was informed by the union and the operators, except the operators of captive mines, that a final agreement had been reached with respect to the 1948 contract.

The differences between the union and the operators of the captive mines related primarily to the demand of the union that its union-shop relationship with the operators as set forth in the 1947 agreement be not disturbed. The captive mine operators took the position that the Labor-Management Relations Act required that a union-shop ballot of employees be conducted by the National Labor Relations Board before the union might negotiate for a union shop. After issuing a complaint, the general counsel of the Board applied to the district court of the United States for issuance of an injunction. This aspect of the dispute was settled on July 13 when the parties entered into an agreement recognizing the union shop subject to the processing of charges lodged with the National Labor Relations Board by the employers and their final disposition by the courts.

Longshore dispute on the Atlantic coast

On August 17, 1948, the President appointed a board of inquiry to report on the labor dispute between certain Atlantic coast steamship companies or associations of employers and certain of their employees represented by the International Longshoremen's Association (AFL). This dispute concerned the terms of a new contract. An injunction was obtained a few hours before the strike deadline of August 21.

The parties met on numerous occasions with the Federal Mediation and Conciliation Service during the injunction period. The board of inquiry's report to the President, dated October 21, contained last offers of the employers with re-

spect to several categories of workers in the industry. The overtime issue in these offers was sought to be resolved under the Fair Labor Standards Act, which partially exempts from the overtime provisions employers employing individuals for workweeks in excess of that specified in the act, without paying the overtime required, if such individuals were employed in pursuance of a collective-bargaining agreement entered into by unions certified by the National Labor Relations Board. Other issues in the case were the amount of a wage increase, retroactivity, vacations, call-in-pay, a welfare fund, and the term of the next contract. On November 8, the Board certified the following results of its ballot of longshoremen in 6 Atlantic cost ports on the last offers made by the employers: Eligible to vote, 26,646; "yes," 1,083; "no," 24,972. The ballots of clerks, checkers, cargo repairmen, and maintenance workers were to similar effect.

Immediately after the ballot was conducted, the parties were again called into session by the Service and more liberal offers were made on behalf of the employers. These offers were accepted, subject to approval by the rank and file of the union membership by the negotiating committee of the union. As the polling of union membership began on November 10, stoppages occurred on and about the docks in New York City. These wildcat strikes spread rapidly to other ports. By November 12, the spokesmen for the union declared that the offers were not acceptable to the membership and that further negotiations would be required. The wildcat stoppages became an official strike as of midnight, November 12, after the waiting period required by the emergency provisions of the Taft-Hartley Act had expired.

Many meetings were held with the parties and commissioners of the Service; but little progress was made in the settlement of the dispute between November 10 and 24. On the 24th the Director of the Service interceded and a settlement was finally announced on November 25, which subsequently was approved by the union membership.

The use of the emergency provisions of the Taft-Hartley Act reviewed above occurred in roughly the first year of operation of the act. Since then the emergency provisions of the act were invoked only twice—in February 1950, in another bituminous contract dispute, and in August 1951, in a copper mines dispute.

Third bituminous coal dispute

The President intervened directly in this coal dispute on January 31, 1950, by proposing a fact-finding board to investigate and make recommendations during a 70-day truce period. This was accepted by the operators but rejected on February 4 by the union. When the stoppage reached virtual industry-wide proportions, the President appointed a board of inquiry under the provisions of the Taft-Hartley Act on February 6. The board reported on February 11 that basically the dispute was over the wage and welfare fund contribution issues and was fundamentally an issue of dollars and cents. It reported that mutually acceptable terms covering the nonwage issues could be negotiated once the money issues were resolved.

A 10-day restraining order was issued on February 11, directing that the strike be called off and that collective bargaining be resumed. In a separate action involving a complaint filed against the union by the General Counsel of the National Labor Relations Board, a temporary injunction was issued on the same day restraining the union from striking for the union shop, the so-called able and willing clause, and certain features of the United Mine Workers pension and welfare fund.

On February 11 and 17, John L. Lewis instructed all officers and agents of the union to comply with the court orders. With the miners refusing to return, however, contempt procedings were initiated against the union on February 20. The temporary restraining order was extended for another 10-day period in order to permit consideration of the Government's petition for an 80-day injunction under the provisions of the Taft-Hartley Act. Negotiations were resumed after the court orders. The Director of the Federal Mediation and Conciliation Service and the chairman of the board of inquiry in the dispute conducted bargaining sessions in an effort to obtain settlement. These efforts were suspended with the start of the contempt trial on February 27.

On March 2, the court found the United Mine Workers innocent of criminal and civil contempt of court because the Federal Government failed to prove that the union had disobeyed the temporary restraining order. On March 3, the

President recommended that Congress enact legislation empowering him to take possession and assume control of the coal mines until such time as an agreement was reached between the operators and the union. On March 5, the union and the bituminous-coal operators signed a contract which ended negotiations that had lasted over 10 months.

Copper-mines dispute

The production of copper was virtually suspended, and lead and zinc production was seriously curtailed by a strike which began on August 27, 1951, at nonferrous mines, mills, smelters, and refineries, called by the International Union of Mine, Mill, and Smelter Workers (independent). A Federal Mediation and Conciliation Service compromise proposal providing for wage adjustments totaling 16 cents an hour was accepted by the union but was rejected by the Kennecott Copper Co., and the strike followed. Thus the parties failed to set a pattern anticipated for settlements with the other three leading firms in the industry.

On the first day of the strike, the President referred the dispute to the Wage Stabilization Board for investigation and recommendations. At a hearing held on August 29 the union rejected a Board request to terminate the strike as a condition to consideration of the disputed issues. Upon being notified that the Board could not appropriately consider the merits of the dispute while the strike continued, the President on August 30 invoked the national-emergency strike provisions of the Taft-Hartley Act and appointed a board of inquiry to investigate and report by September 4.

A partial settlement was made on August 31 when the Kennecott Copper Co. and the union agreed to raises of 15 cents in the hourly wage and of 4½ cents hourly to cover cost of pension benefits, retroactive to July 1, 1951. The agreement permitted reopening of the contract for wage negotiations on January 1, 1952. The three other major firms rejected this pattern. The board of inquiry, on September 4, reported that a continuation of the strike would cause rapid reductions of the stockpile and "expose our democracy to an incalculable risk in the event of war." The President then directed the Attorney General to seek a court injunction to halt the strike.

A temporary court injunction was issued on September 5 directing the strikers to resume work; ordering union officers to direct their members to return; and directing the companies to begin immediate collective bargaining with their workers. Back-to-work movement of the workers was virtually completed by September 10. On September 27, the union and the Phelps Dodge Co. reached an agreement, followed by an agreement with American Smelting & Refining Co. on October 9, and with the remaining companies on November 5.

This recital of events leads to some clear conclusions and others based on surmise and judgment. First, injunctions were obtained in six of the nine disputes. Injunctions were not sought in the meat-packing and telephone disputes, and an injunction was requested but dismissed in the second coal dispute.

In the meat-packing dispute there were stoppages in some plants during a period of about 10 weeks. Other plants continued production throughout. The scarcity of meat products did not develop, while prices of some meat products even declined during the period of the stoppages. Under these circumstances the President apparently did not feel that the situation was sufficiently grave to require invoking the injunction procedures. In the telephone dispute the union indicated a willingness to continue negotiations and when, after the appointment of a board of inquiry, the company gave unqualified assurances that during the period of continued negotiations the status quo would be maintained, service was continued until a settlement of the dispute was reached. In the second coal dispute several court actions actually were involved. An injunction was issued requiring the union to bargain collectively with the Southern Producers Coal Association, and a United States district court handed down a decision which resolved one issue and cleared the way for bargaining on the other issues in the dispute. The negotiations were carried on during

the last 2 months when the old contract was still in effect, and agreement was reached a few days before the old contract expired. Except for these three cases, an initial stoppage of production affecting the national health or safety actually was forestalled by an injunction.

Did the use of the injunction in the other six disputes assure that there would be no loss in production? It can never be known whether the workers involved in these disputes would have stayed on their jobs if injunctions had not been issued. As the injunctions were generally obeyed in these six disputes, we must conclude that production losses were averted by the injunctions and might have occurred were injunctions not obtained. However, some losses occurred despite the injunctions. Production was down for 2 to 3 weeks in the first and third of the coal disputes. The men returned to work after an injunction was issued in the copper dispute, but a week's production was lost in the process, in addition to the larger loss incurred before the injunction was obtained. Whether a sustained strike would be tolerated during the 80-day period and what measures of enforcement the Government might undertake to get the men back to work if they remain in contempt of court are still problematical, despite the fines imposed by the court against the United Mine Workers and its president in the first of the coal disputes in which the emergency dispute provisions of the Taft-Hartley Act were applied.

The prevention of a work stoppage for an 80-day period, during which it is hoped that continued collective bargaining, fact finding, mediation, and maybe exhaustion would assist in reaching a settlement is the utmost in the way of a waiting or cooling-off period provided by the Taft-Hartley Act. If all this has proved insufficient and the employer's last offer has been rejected, the parties may, of course, continue to negotiate; but a break-off of negotiation and a work stoppage would be legal under the Taft-Hartley Act, even though the President has already proclaimed that work stoppage would imperil the national health or safety. In the first coal dispute, in the copper dispute, and in the shipping strike involving the Atlantic-coast unions, settlement was reached within the period the injunction was still in effect. In the atomic-energy dispute, settlement was not reached until after the period of the injunction had expired; but there was no work stoppage. In the maritime disputes, strikes were averted for the statutory 80-day period; but after that period had expired the men on the west coast struck, and full shipping operations were not resumed on the west coast for a period of about 3 months. In the east-coast longshore dispute all the procedures of the Taft-Hartley Act were exhausted. While the strike was originally forestalled by an injunction, settlement was not made during the 80-day period; the employees rejected the employers' last offer; but a strike occurred after the injunction was lifted, and the dispute was not settled by the parties for about 2 weeks thereafter.

The provision of an 80-day fact-finding and waiting period, along with other provisions of the Taft-Hartley Act, such as the duty of both sides to bargain, the 60-day notice of intention to change the contract, and the notification of the Federal Mediation Service, were designed to assure that there will be time for collective bargaining, mediation, fact finding, and the compromises which lead to agreement. In some but not all industries and services, the 80-day period creates an opportunity for stockpiling and thus to lessen the impact of a later stop-

page. Whether a compulsory waiting period has an influence on the length of a stoppage which finally takes place is debatable. In most cases, however, a work stoppage in a vitally necessary industry is hardly less damaging because it comes 80 days later than it ordinarily would have come. The damage would depend on the length of the stoppage, little influenced by the length of the waiting period. This is recognized in bills which have been introduced to require the maintenance of the status quo after the 80-day waiting period has expired. But such proposals contain no particular alchemy to attain satisfactory settlement. If no settlement has been reached during the 60-day notice plus the 80-day compulsory waiting period, it is hardly likely that further delay is all that is required to reach agreement. One might reasonably conclude that in these cases the procedures of fact finding and delay are not efficacious, and that, if it is not desired to force a settlement by any of the devices later to be considered, a strike after 140 days' negotiation rather than further delay would more certainly break the deadlock and more quickly.

Did the use of the injunction facilitate arriving at a settlement? This question is not easy to answer because the injunction and the waiting period are inseparable and, as indicated above, settlement was made during the 80-day period in about half the disputes. Since settlement must come at some time and 80 days is a reasonably long time after a 60-day strike notice and possibly other delays, one would expect most settlements to come during the 80-day period. The Federal Mediation and Conciliation Service pointed out in its summary of the atomic energy dispute that, while efforts at mediation were intensified during the last days of the injunction period, the imminence of the discharge of the injunction did not have the effect of producing a settlement. Agreement was finally reached after 50 hours of continuous negotiation 3 days after the expiration of the injunction.

As a result of its first year's experience, during which time seven of the nine emergency disputes took place, the Service stated in its annual report for 1948:

> One of the conclusions which the Service is undoubtedly justified in drawing from its experience of the last year is that provision for an 80-day period of continued operations, under injunctive order of a court, tends to delay rather than facilitate settlement of a dispute. Parties unable to resolve the issues facing them before a deadline date, when subject to an injunction order, tend to lose a sense of urgency and to relax their efforts to reach a settlement. They wait for the next deadline date (the date of discharge of the injunction) to spur them to renewed efforts. In most instances efforts of the Service to encourage the parties to bargain during the injunction period, with a view to early settlement, falls on deaf ears. Further, the public appears to be lulled into a sense of false security by a relatively long period of industrial peace by injunction and does not give evidence of being aware of a threat to the common welfare which would produce a climate of public opinion favorable to settlement. Whether this experience dictates the desirability of a shorter injunction period or an injunction period of indefinite duration, the Service expresses no opinion at this time.

There has been agreement for some time that the emergency provisions of the Taft-Hartley Act could be improved, even if the main intent of the procedures is preserved. In the amendments proposed by Senator Taft in the first session of the Eighty-first Congress the President would call on the employer and employees to continue work before he appoints a board of inquiry. This was to avoid the gap of 4 to 14 days which experience has shown was the interval between the appointment of a board of inquiry and the issuance of an injunction—

during which a work stoppage of the type which the law attempts to avert could legally have taken place, and did in several cases. Another amendment would have permitted boards of inquiry to make definite recommendations in the expectation that this would focus public opinion on a feasible solution and assist the parties in coming to agreement. A third amendment would have added the power of seizure to the existing powers of the President to ask for an injunction and to submit the whole matter to Congress for special legislation.

These amendments were not accepted. Criticism of the emergency provisions of the Taft-Hartley Act rests mainly on the use of the injunction, which is regarded as one-sided, and on the fixity of the procedures, which is alleged to enable one or the other of the parties to anticipate the probable effects and to bring the procedures into play when it is to its advantage. On the other hand, the disposition to avoid invoking the emergency provisions of the Taft-Hartley Act in national emergency disputes has left the country with insufficient experience for any definitive judgment regarding their efficacy in facilitating settlements by the means they provide.

OTHER TYPES OF FACT-FINDING MACHINERY

Fact finding, which involves delays in strike action by compulsory cooling-off periods and brings to bear the influence of impartial analysis, has also been employed without the formal steps and procedures required by pertinent legislation. President Truman appointed such boards on his own cognizance a number of times, and the activities of these boards have been respected. The National War Labor Board in World War II and the Wage Stabilization Board of the Korean war period were also essentially fact finding in their procedures for handling disputes. To be sure, the handling of disputes by the National War Labor Board of World War II and by the Wage Stabilization Board during the Korean crisis was greatly influenced by the wage and price policies adopted for the emergencies. Also, many of the decisions of the National War Labor Board were enforced by seizure; the decisions were directives and had the effect of compulsory arbitration. But the basic procedure of these boards falls in the category of fact finding with recommendations for settlement.

When fact finding was first proposed to the Congress by President Truman and took form in the Ellender and Norton bills in the Seventy-ninth Congress, it provoked almost violent opposition by representatives of organized labor. They took the position that the "strike weapon" was organized labor's most treasured possession, by the use of which the bargaining strength of labor can be made as potent as that of the employer, since the employer is made to realize that the demands of labor can be ignored only at the risk of facing the losses due to a shut-down. They argued that fact finding and waiting periods blunt the edge and limit the effectiveness of this weapon. Fact finding involves formal delay, during which time the union is no longer free to exert its economic power by selecting the time or manner of attack. They also felt that fact-finding procedures would give the employer time to prepare to counteract the pressure of the union or to nullify its effects. In addition, the unions opposed required waiting periods and fact finding because they regarded these as a means of forcing men to work against their will. The opposition

of unions to fact-finding procedures continued throughout the discussion of the Case bill and the bills which later came to fruition in the Taft-Hartley Act.

However, as of 1952, the combined effects of the operation of the emergency provisions of the Taft-Hartley Act, Presidential ad hoc fact-finding boards, the Railway Labor Act, and the operation of the disputes machinery of the National War Labor Board and the Wage Stabilization Board have served to make fact finding a generally accepted device following inconclusive negotiation and mediation. It is noted that the findings or recommendations of fact-finding boards are not binding on the parties; otherwise, there has been a willingness to permit the machinery of fact finding to function. Those who emphasize the desirability of preserving the greatest amount of freedom for the parties in industrial disputes agree that fact finding is a relatively weaker form of intervention than seizure or compulsory arbitration or proposals to limit the size of units in collective bargaining.

The positive advantage of fact finding is that it lengthens the period of serious negotiation and delays resort to strikes, while the report itself brings a disinterested point of view to bear on the issues before the disputants. It provides an opportunity for both sides to hear each other present a reasoned case calmly. It serves as an agency for the formation of public opinion. There have been a number of cases where the discerning observer could see one side or the other give ground to the influence of public participation and public discussion. Fact-finding reports thus adjust the parties to a settlement involving less than the full demands which caused or threatened to cause the stoppage or more than the final offer of the other side. A fact-finding report can take the labor leader or the industry representative off the hook and, by suggesting a reasonable solution, the parties are encouraged to compromise with face-saving safety. A peaceful compromise of the dispute thus becomes possible and not necessarily on the exact terms recommended by the fact-finding board. In a considerable number of cases, fact-finding reports and recommendations have broken an impasse without a work stoppage.

With the passage of time and experience, both labor and industry representatives have found refuge in fact finding, in some cases all too eagerly, since this was a means of shifting hard or disagreeable wage decisions to the fact-finding or stabilization agency. One hears less of the argument based on "involuntary servitude" and the weakening of unions by waiting periods and more about the weakening of collective bargaining itself when fact finding is used, and the tendency of fact finding to become a form of compulsory arbitration as the parties sit out the waiting period in the expectation that the Government will eventually have to settle the dispute. In addition, when it is attempted to impose any type of wage- and price-stabilization policy on parties to a wage dispute, we necessarily remove from the decision of the parties—that is, from free collective bargaining—a controlling factor in any joint decision. They run to the place where such decisions are made as the effective procedure for settling a dispute. Fact finding becomes a normal procedure for handling disputes under a wage-stabilization program. Both collective bargaining and mediation come to be regarded as preliminary skirmishes until the case comes to be regarded as of sufficient importance to be "sent to the board."

Between World War II and the Korean situation, fact finding without legislative sanction was used to a considerable degree, particularly in the prolonged disputes during 1946. The outstanding cases were the General Motors and steel disputes, although there were many others in which fact finding was used. In the General Motors dispute, the union did not call off the strike, which lasted 113 days. The findings were satisfactory to the union but not to the company. Settlement was, however, probably facilitated by the board's findings. It was made at 1 cent an hour less than the board's recommendation; but the union claimed that other concessions would cost another cent an hour. In General Motors and in other automobile companies, the Office of Price Administration allowed increases in prices to cover estimates of increases in costs. In the steel dispute, the President made his own recommendation for a wage increase following the pattern of the General Motors increase. This was accepted by the United States Steel Corp. on condition of a $5-a-ton price increase, which was granted. There was a strike which lasted about 25 days. The fact-finding board made its report after the strike was settled.

The heart of these disputes was the wage-price problem, and the disputes would probably have been settled earlier than they were if there had been no wage and price controls, with or without fact-finding boards. The issues were embedded in wage and price control, social and economic theory, and estimates of business prospects, rather than in some directly ascertainable facts.

When fact-finding boards are invoked without a procedural requirement of law, continuous production is difficult to guarantee, as intervention generally follows a stoppage which has already occurred. Even during the period of the Korean crisis and with the selective cases referred by the President to the Wage Stabilization Board, continuous production has not always been assured.

In the American Smelting case, a strike was called on July 2, 1951. The workers returned to their jobs after the President certified the dispute to the Wage Stabilization Board on July 26. The recommendations of the Board and continued negotiation resulted in a final settlement on October 19.

In the copper cases, an industry-wide strike began on August 27, 1951. The dispute was certified to the Wage Stabilization Board on the first day of the walk-out. When the union rejected the Board's request for a return to work, the President invoked the emergency strike procedures of the Taft-Hartley Act on August 30. One major company settled the next day, but employees in the rest of the industry stayed out until an injunction was obtained on September 5. Most of the workers returned to their jobs within the next 2 days. Agreements were made with the other companies in subsequent weeks.

In the Borg-Warner case, a strike began on October 9, 1951. The President certified the dispute to the Wage Stabilization Board the next day. The union rejected the Board's request for termination of the strike, claiming that only a minor portion of the company's output was of military items. Most of the workers did not return to their jobs until the first week in November.

In the aircraft cases, involving Douglas and Wright, work stoppages had lasted 5 weeks and 2 weeks, respectively, before the cases were certified by the President to the Wage Stabilization Board. There was another week's delay before the men returned to their jobs.

Both disputes were not settled until several months later, but there were no further interruptions of production.

Without formal procedure written into law, such as is provided in the Railway Labor Act, and/or without the use of the injunction, the record of fact-finding boards in keeping men at work while the dispute is being investigated has been very spotty. While unions have generally delayed calling strikes pending action by a Government board, particularly during periods of wage and price stabilization, there have been strikes to hasten getting the case to the board, strikes while the board has been investigating the case, and strikes after a recommendation has been made.

Still the recommendations of fact-finding boards, generally well below original union demands, serve a mediatory function in most cases. With a knowledge of the demands and the basis for them and a consideration of counterproposals and the reasons therefor, the fact-finding board develops recommendations which appear feasible in the light of the numerous circumstances surrounding the dispute. Where the parties would be otherwise too far apart, a fact-finding report may make a valuable contribution by substituting reason for emotion, narrowing the issues, focusing on those which can be settled, and saving face on both sides. When recommendations are made and they are accepted by one of the parties to a dispute, that side generally feels justified in making no further compromises beyond those involved in the recommendations. However, if the criticism can be made that reliance on fact-finding boards weakens the desire to give and take and the willingness to make further compromises and adjustments required for reaching agreement, this may be offset by the meliorative power of an independently arrived at compromise of the issues in a dispute.

The eventual acceptance of recommendations of fact-finding boards is a species of voluntary arbitration. However, the great difference is that under voluntary arbitration the parties agree in advance to accept the decision of a third party or of a board selected or approved by the disputants. As it has been developed in the United States in the post-World War II period, fact finding has not been voluntary arbitration because the parties have not agreed in advance to accept the findings or recommendations of the board set up by the Government to investigate the dispute. Arbitration as such—voluntary and compulsory—will be treated in a later section of this report.

MAKING MEDIATION MORE EFFECTIVE

Mediation is an old and tested technique in which the parties to a dispute agree that the experience, judgment, or skill of a third party might assist them to reach a satisfactory settlement. The willingness to use the services of mediators is itself an indication that the deadlock is not insoluble and that a work stoppage need not necessarily ensue. It shows that the parties still have an open mind and are willing to have an impartial outsider consider the merit or force of their arguments and their claims and help them reach an agreement.

Mediation has been employed voluntarily in collective bargaining negotiations for a long time, but it is only since the passage of the Railway Labor Act in 1926 that the use of mediation has been made a requirement by law in the bargaining procedures of any segment

of our economy. Now the Taft-Hartley Act also requires that the services of mediators be employed in orderly steps in the negotiating process. The act provides for a 60-day notice on the other party prior to the expiration date of an agreement and a 30-day notice on the Federal Mediation and Conciliation Service if no settlement has been reached. The reports and statistics of the National Mediation Board and the Federal Mediation and Conciliation Service indicate a broad usefulness to the parties during different stages of negotiation and in the reaching of agreement.

Mediation is an art, the techniques of which have been worked out in long and diligent practice. The mediator works under the basic objectives of maximizing the collective bargaining which is taking place and avoiding as long as possible any test of economic combat. Mediators have developed procedures with respect to meetings with the parties severally and jointly, the conduct of such conferences, and suggestions which they as mediators may make for solutions on which agreement seems possible.

The use of mediation is an assurance that the position of the parties is based on reason and not only on economic force. They make their appeals to the mediator as well as to the other side. In evaluating proposals and in making judgments on the issues while dealing confidentially with both sides, the mediator adds a new facet to the bargaining by the parties and incidentally affects their bargaining positions. If the mediator's efforts fail, and if the parties are not willing to submit their differences to an arbitrator for a decision—which they generally do not do—then there is a shut-down and normal production ceases, unless production can be continued by the other various devices considered in this report. However, if the mediator succeeds, the dispute is settled. Not only is the work stoppage avoided, but also all the paraphernalia and uncertainties of fact finding, injunction, and seizure.

In some reflections on the work of the mediator, the Director of the Federal Mediation and Conciliation Service pointed out in his 1951 report that the progress of industry and collective bargaining have imposed greater demands on the mediator in terms of knowledge, understanding, and special techniques.

> The time is within the memory of present staff members, when the bringing of the parties together in one room and effecting a willingness on their part to discuss a peaceful resolution of their dispute ended the mediator's responsibility. In most cases the issues themselves were definite; to a much greater extent than today, they involved questions of equity as the parties saw them, rather than evaluation of highly complex problems.
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> The situation is entirely different today. Except in rare instances, parties themselves have made honest efforts, through discussion in conference, to resolve their own issues. The mediator enters the situation when the resources of the parties, in terms of knowledge, persuasiveness, and in some cases economic strength, have failed to bring about a settlement. He is faced with the problem of bringing something new or different to the many possibilities that the parties have considered themselves. He is confronted with the need for suggesting ways out of "impossible situations." He is looked upon as having, because of his background, his knowledge, and his experience, resources beyond those which the parties themselves bring to the conference table.
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> His job is made more complex as a result of the tremendous growth of employee and employer organizations and because the considerations in a single dispute today may have an impact on the entire economy. He meets rigid resistance emanating from "high policy" as established at the top levels of the large aggregate organizations. He must accommodate to an expanded body of legislation which defines and delimits the areas in which the parties may determine

their own destinies. The labor dispute today is essentially different for all of these reasons from one of 25 years ago.

In his Presidential address before the Industrial Relations Research Association on December 29, 1951, Dr. William M. Leiserson, one of our most experienced mediators in industrial disputes, raised questions regarding the function of mediation and its present effectiveness. He questioned whether making mediation facilities available is enough and whether full use of mediation actually is being made. He deplored the lack of procedures with respect to the timing of mediation efforts. He does not regard mediation efforts which attempt to bring the parties back to negotiation after a work stoppage as part of the peaceful settlement of industrial disputes, but rather as a means of settling or shortening work stoppages.

Mediation can hardly have much effect in preventing work stoppages if its purpose is as much to settle strikes as to adjust disputes before they break out in strikes. And the available strike figures seem to show that it hasn't had much effect in reducing the national trend of strikes.

Dr. Leiserson argues that there must be a set time for mediation to intervene and to use its techniques for reconciling the differences between the parties. All too frequently mediation before a strike has occurred consists principally in "sitting in" on the negotiations and finding out what is going on. The mediator's function is not merely to go through some formality, so that the dispute could be referred to some higher authority which may make a "finding" or which may have power to decide the issues. Instead, the mediator must find a basis for reconciling differences. He must take charge of the proceedings following an impasse in the negotiations of the parties. He needs skill, resourcefulness, and time to induce one or the other or both to change their minds. The mediator performs his proper function—

in analyzing the positions of the parties, questioning the weak points where compromises might be in order, suggesting possibilities of give and take, and proposing various formulas to serve as a basis for agreement.

According to Dr. Leiserson, mediation which, next to collective bargaining, is the most important of the devices we have for promoting peaceful adjustment of disputes is, as presently practiced, the weakest in effectiveness.

Dr. Leiserson's specific proposals for making mediation effective are, first, setting aside a definite time period after collective bargaining ends to give mediation efforts a fair chance to try their methods of bringing the parties to agreement before strike action is resorted to. Asserting that compelling mediation would no more interfere with the right to strike or lock-out and the right to settle disputes by mutual agreement than compulsory bargaining does, he would not hesitate to suggest an amendment to the Taft-Hartley Act to require a proper period for mediation.

Secondly, Dr. Leiserson would supplant the haphazard beginnings of mediation by orderly arrangements for invoking the services of mediation agencies and for having them intervene on their own motion. The practice of having mediators at the beck and call of individuals on either side of the dispute must be discontinued. Mediators should not sit in on collective bargaining; the function of mediation is not to help one of the parties in bargaining.

The practice of mediating in the midst of collective bargaining ought to be discontinued. The parties must necessarily control their own negotiating, and

mediation in such surroundings is often what a strong union leader or a dominating employer wills it to be. If the mediator is to have any influence in pressing for a peaceful settlement, he must be in a position to deal with the executives of both parties on a basis of equality. He cannot maintain that position without directing and controlling the process of mediation.

Third:

While mediation needs to be kept as informal as possible, it cannot accomplish its purposes without certain minimum procedural requirements that are commonly accepted in conferences of any kind, and the most important of these is that the mediator be in charge of the proceedings. The parties must know that it is their responsibility to present their cases fully and support them with facts and arguments, much as in an arbitration proceeding; and they must expect that the mediator will analyze and question their positions. Otherwise the mediator will not be able to make constructive contributions toward an amicable agreement. Most people have a fairly clear picture of arbitration and fact-finding proceedings, but few understand how a mediation agency goes about its business of settling disputes by leading them to adjust their differences.

Fourth, the appropriate time for beginning mediation is after collective bargaining has ended in disagreement, and before a work stoppage has begun. Combined with the first suggestion, this would make mediation more effective without interfering with the parties' direct negotiations and without changing the process of mediation from a method of peaceful adjustment to a device for settling strikes.

The Taft-Hartley Act provides in title II for the carrying out of a policy which declares that the most satisfactory way of settling issues between employers and employees is through conference and collective bargaining and that this objective is advanced by making Government facilities available for mediation, conciliation, and voluntary arbitration. An independent Federal Mediation and Conciliation Service is set up and it is given authority to proffer its services. It provides further that when the Mediation Service intervenes it should hold prompt meetings to attempt settlement. The act does not provide any fixed or definite period for such mediation effort, but merely adds that—

if the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion.

There is also created a 12-member National Labor-Management Panel whose duty it is—

to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered.

Within this broad statement of policy and the facilities and agencies provided, it would seem that ways and means could be found to improve the effectiveness of mediation.

Dr. Leiserson's observations and the instances he gives in his address of the perfunctory employment of mediation suggest that something might be gained in elevating the status of mediation by providing a minimum period of mediation and spelling out the mediator's functions to some degree. He himself observes that the Railway Labor Act provides a period for mediation. Yet, as indicated in the discussion of the Railway Labor Act earlier in this report, the National Mediation Board has called attention to a deterioration in industrial relations on the railroads because of a failure to use all the procedures of the Railway Labor Act. In their 1951 report they say that in disputes on individual carriers when not under the pressure of a

strike threat, the Board's mediatory services are able to resolve the issues, but that in the national cases under the threat of a strike, failure to make full and conscientious utilization of the various steps of adjustment provided in the law has resulted in interruptions of service. It is a simple fact that all but a very small proportion of the disputes in all industry are settled without resort to work stoppages. It is that small proportion in vital industries that creates the problem, the solution of which is sought by restrictive legislation, court action, seizure, and compulsory methods. If improved mediation can contribute to the lessening of such interruptions of vital production, it is worth every effort to bring about such improvement. For the techniques of mediation are only an extension of collective bargaining by bringing reason and argument and objective viewpoint to bear on the differences between the parties. The prize for successful mediation is no mere postponement of a strike or even a fact-finding report or recommendation, but a reconciliation of differences and a voluntarily accepted settlement of the dispute.

GOVERNMENT SEIZURE AND ITS PROBLEMS

The seizure of a business by the Government is a method which has been used as a means of avoiding work stoppages in emergency disputes. The aim of seizure in connection with industrial disputes is not to nationalize an industry but to assure continued production in the expectation that workers will not "strike against the Government," even though they do not actually become public employees. Eventually the dispute is settled by one means or another, after which the property is returned to the owners and private operators. Seizure has been the factor which resulted in continuous employment in a strike situation numerous times in the past, although on some occasions it was accompanied by injunction because in these cases men were willing "to strike against the Government" but it was felt they would be more fearful of the consequences of contempt of court.

Despite criticism in numerous quarters, seizure has retained considerable appeal as a means of handling emergency disputes. Fact-finding techniques, including the Railway Labor Act and the Taft-Hartley Act, can delay a work stoppage for limited periods. In seizure, possession by the Government is also expected to be temporary; but while the emergency situation continues, the property may be kept under Government control for months or even for years. The property is not normally returned to private operation until there has been a settlement of the dispute between the parties. There are, however, various types of seizure possible and the results obtainable would differ greatly depending on the policies employed during seizure. In recommending a seizure law in connection with the steel dispute in 1952, President Truman said:

> A seizure law, if properly drafted, can achieve the objectives of assuring (steel) production, treating both parties fairly, and encouraging collective bargaining.

If these claims can be justified, and if there are no offsetting disadvantages, there would be very great merit indeed in a properly drafted seizure law.

As a device for assuring the continuance of the most necessary production, seizure has wartime emergency associations which has given it greater acceptability than other forms of compulsion have attained. Without specific legislative authorization, seizure was used 12 times by President Roosevelt between 1941 and 1943. During the period in which the War Labor Disputes Act (the Smith-Connally Act) was in effect, seizure had legislative sanction.

During World War II there were between 200 and 300 cases in which the National War Labor Board exhausted all its procedures of persuasion, appeals to patriotism and to the no-strike pledge, as well as the use of various sanctions, such as the withholding of war contracts and priorities and the removal of draft deferments and employee benefits, without obtaining compliance. It reported 75 of these to the Director of Economic Stabilization or the President, and in about 50 cases seizure proved effective under wartime conditions. The men were now "working for the Government" and you don't "strike against the Government." It is noteworthy that about half the seizures were used to compel employee compliance with War Labor Board orders while the other half were used to compel employer acceptance, a large proportion of which involved orders establishing maintenance of membership.

When the bills which became the Taft-Hartley Act were being considered, the Congress had this apparently successful experience before it. Yet it rejected seizure as a procedure for obtaining continuous production in emergency disputes in peacetime and chose instead the method of fact finding during a compulsory waiting period backed up, if necessary, by an injunction sought by the Government. In its limitation on the freedom of action, seizure is more coercive than the Taft-Hartley Act, since both postpone the use of the strike weapon and an injunction can be obtained under either procedure; but under seizure the Government can demand continued work and production on the old terms for a more or less unlimited time if the product or service is needed in the national interest, in contrast with the Taft-Hartley Act, where there is no means of assuring or legally requiring work or production after the injunction is vacated at the end of the 80-day waiting period.

There is, however, a very great difference between the two approaches to the problem insofar as the substantive terms of employment are concerned and indirectly, therefore, there is a different effect on the possible settlement of the dispute which created the emergency. Under the Taft-Hartley Act the compulsory waiting period and the fact-finding report, the requirement of mediation, and the voting on the employer's last offer are all intended to facilitate settlement, but there is no power inherent in the processes of the law to impose new terms on the parties. Under seizure, however, new terms may be imposed, although they need not be. All depends on the particular seizure law or directive.

While it is not the purpose of this report to analyze the various seizure bills which have been introduced, it should be clearly understood that quite radically different substantive proposals have been subsumed under the term "seizure." In the wartime seizures it was quite common for the Government to impose the recommendations of the National War Labor Board. In the President's seizure proposal with respect to the railroads in 1946, he recommended that wages be

fixed by arbitrators during the period of seizure and that the Government retain the profits earned by the railroads during the period of seizure. In the coal-mines seizure in 1946 an agreement was made between the seizing agency and the United Mine Workers—the so-called Krug-Lewis agreement. In other actual seizures and in bills introduced, the status quo is maintained in wages and working conditions during seizure. In still other proposals, some or all of the recommendations of a Government board may be adopted during seizure. Some would limit seizure to fixed periods, while others would have no defined time limit to seizure. Obviously the results obtained by seizure would be radically different under these varied practices and proposals.

A similar diversity exists with respect to the treatment of profits under seizure. After the parties agree to terms and the Government relinquishes its occupation, there must be an accounting of the period of seizure. In the past the Government has interfered only in a negligible way with operating control by management during the period of seizure. The American flag was hoisted and a few top Government officials were installed alongside the company officials. Everything proceeded pretty much as usual. Upon termination of seizure an agreement was entered into in most cases whereby the Government released all profits to the management while the companies in turn assumed responsibility for all claims against the Government in connection with and during the period of seizure. But in some cases the companies sued the Government for just compensation under the fifth amendment, carried their cases to the courts and settled for various amounts in claims.

The various proposals that the Government retain all or part of the profits of a seized firm or pay a rental for the use of the property need to be thought out in terms of the complicated economics of profits and the constitutional requirement that just compensation must be paid for taking private property for public use. The case is complicated by the fact that, except for seizure, the facility would not have been in operation and that costs would accrue without the possibility of offsetting receipts. With respect to profits during seizure it must be noted that sometimes losses and not profits could accrue and that anyway profits are not earned every week or month of the year. Seasonal variations in profits may be as great as several hundred percent because profit is a residual over costs and costs are more stable than gross income. Thus during a temporary seizure of from 1 to 4 or 5 months, not only may losses accrue even for profitable companies but for others the profits for the months of seizure may be the profits for the whole of the year or even more. Also, because of intercorporate relationships and the diversity of production and sources of income for any of the type of enterprise which is likely to be subject to seizure, there will be questions as to what exactly is seized and whether income from subsidiaries not directly engaged in the production which is sought to be continued may nonetheless be seized or impounded.

In the Government seizure of the 103 trucking companies in August 1944, where seizure lasted for the different companies for from 1 to 15 months and most of the lines made good profits during seizure, the President set up a Motor Carriers Claims Commission to handle these cases. The Commission ruled in a test case (R-B Freight Lines, Inc., of Aberdeen, S. Dak.) that under the fifth amendment of the Constitution the Government owed compensation for rental of the lines. Com-

pensation was worked out on various items seized and used: 5 cents per mile as fee for a tractor-trailer unit operating 5,000 miles a month, or $250 a month per unit; $4 a day for a pick-up truck; 4 percent a month on book cost of office furniture; 7 percent per year on land owned, and 5 percent per year on buildings.

The Government appealed the case to the Supreme Court and lost. It was then decided to negotiate settlements with the other claimants rather than fight each case through. As reported in the press, 91 lines have agreed to settlements for about two-thirds of the rates established in the R-B case, 12 lines not yet determined. If they all agree, the Government will pay about $8.5 million in addition to the $1.5 million cost of Federal operation, including administrative expenses. Congress will be required to appropriate the money.

In the case of *U. S.* v. *Pewee Coal Co., Inc.*, a 5-to-4 Supreme Court decision rendered in April 1951 ruled that in seizing the mine the United States became liable under the Constitution to pay just compensation of $2,241.26, which it ruled was the amount of the operating losses attributable to Government operation of the mine. Referring to the fact that if a stoppage had been permitted the company would have sustained great losses, the Court added that "it is immaterial that governmental operation resulted in a smaller loss than Pewee would have sustained if there had been no seizure of the mines." This would appear to ignore the factor of potential losses had the strike actually taken place. One concurring opinion and a strong dissenting opinion of four Justices leave great doubt as to how the Court will finally determine the Government's liability in other cases. But under the majority opinion it appears that future seizures by the Government if brought into the courts, could redound to the benefit of the seized company, particularly if the company has been losing money. This is an important consideration in view of allegations that under seizure the managements have been protected and have had little inducement to make further concessions or to continue effective collective bargaining.

The constitutional issue involving the powers of the President in these premises having been settled by the Supreme Court in the Steel case in 1952, it is assumed that the Congress can pass a law authorizing Government seizure under prescribed conditions. Moreover, since seizure is not a simple matter but may involve a variety of possible courses of action which have a varying effect on the parties and on their collective relations, legislation would have to spell out what should be done during Government seizure, particularly with respect to wages and working conditions, and profits and losses. Such a law would deal, inter alia, with the following matters: (1) administration, including operation and financing; (2) what to do about wages and working conditions; (3) factors or formula for providing for just compensation for property seized and operated. Legislative provisions regarding these matters will bear not only upon the genuineness of seizure but also on its effectiveness in facilitating the settlement of industrial disputes.

Administration and operation during seizure: Government seizure has been a stratagem in the effort to continue production where a dispute in an essential industry or service has threatened to result in a work stoppage. Its effectiveness has depended upon its novelty, its apparently desperate quality, its appeal to patriotism and to the pri-

macy of the national interest. Each case of seizure was a separate problem. In most cases existing management was utilized, but in some, like in the S. A. Woods Machine Co. seizure, top management was displaced by a new management. Operating expenses were generally defrayed by the company, but in some cases, like the trucking companies, current operations had to be financed with Government funds. The duties of the seizing agency of the Government with respect to prior obligations of the company, procurement, inventories, and work in process, pay-roll deductions and State and local taxes have not been uniformly worked out, but were played by trial and error, depending to a large degree on the cooperativeness of management. Suits for compensation have not been numerous, but, if seizure is adopted as a peacetime policy, the Government can hardly proceed indefinitely on a catch-as-catch-can basis.

Wages and working conditions: There are three broadly different possibilities: (1) maintain the status quo, (2) apply the terms and conditions recommended by emergency boards, (3) make changes during seizure that are within the limits of the recommendations of the emergency board.

The maintenance of the status quo has been the traditional means of continuing production while allowing for time to negotiate a new contract. This is the procedure followed in the Railway Labor Act, in the Taft-Hartley Act, and in most of the postwar seizures. Seizure, however, is more than the provision of a short waiting period. In the postwar period of rising prices and annual improvements in wages and working conditions the maintenance of the status quo would have meant serious losses to labor where the plants were held for more than a certain number of months. The Government has, moreover, not always maintained the status quo. As indicated, it negotiated a new contract with the United Mine Workers and made these a condition for returning the mines to the owners. In the railroad seizure which began in August 1950 and ended in May 1952, one of four unions originally involved in the dispute settled on the terms recommended by the emergency board and the final settlement was made retroactive for the other three unions. In the interval the three unions which remained involved in the dispute were given 5 cents an hour increases, a small proportion of the amounts recommended by the emergency board to which the operators had acceded. Paying the wages under the old contract, which one of the parties has rejected, is a form of penalty against that party. The imposition of terms determined by a Government board, which is not acceptable to either or both the parties, is a form of compulsory arbitration. If a voluntary settlement is not made, the period of seizure and terms unsatisfactory to one or both the parties could be imposed for a long time.

Just compensation: This is a no-man's land in the whole theory of seizure. Seizure was adopted as a policy without any serious consideration of the financial liability involved. In most cases the seizure by the Government was a formality; operations continued as before seizure and neither the management nor the Government claimed compensation for loss or damages or expenses incurred. In several cases where damages were claimed, like Montgomery Ward, the seizure agency made acceptable payments and apparently without specific legislative authority or appropriation. In the few cases which were taken to court, as in the trucking cases and the Pewee Coal Co.,

the courts had to proceed into an uncharted sea and the situation as a whole is not at all clear today. The only certain conclusion of the courts is that the Government is liable for claims when it seizes property for the purpose of maintaining production in essential industries. How much and on what basis is a matter for judicial determination under the fifth amendment to the Constitution of the United States.

Labor representatives and others have protested that seizure which does not jeopardize a company's profits in any way is only a token seizure involving no possibility of loss to the company but compulsion to work for employees. If any proposal to impound or withhold profits during seizure is adopted, a substitute for current profits will have to be found to meet the constitutional requirement of making just compensation for taking private property for a public purpose. If a rental, how is such rental to be determined? If reductions from receipts during seizure are authorized, various contingencies would have to be considered. It is supposed that the total amount which could be claimed by the company would be less than the earnings during the period and that this will serve as an inducement to the company to continue in a bargaining frame of mind. It should be noted, however, that many profitable companies have regular losses during certain months of the year and more than average profits during other months. A rental or other payment based either on past average earnings for the period or as a percentage on investment could be more than the actual profits during the period of seizure for some companies while practically confiscatory for others. In its report on the income of corporations for 1951 the National City Bank shows percentage return on net assets for the more important industrial groups which might be involved in a seizure ranging from 3.8 percent to 17.5 percent. Within each of these industries the rate of return of the different companies will also have considerable range. In addition there are other financial factors to be considered in the use and return of private property, as, for instance, adequate provision for maintenance during the period and the status of inventories.

A major question involved in Government seizure as a device for assuring continuous production is the means of encouraging further collective bargaining by the parties and arriving at agreement. The conditions which would operate under a particular seizure plan would greatly influence the reaction of the parties to the continuance of seizure and to future collective bargaining. For instance, under the seizure plan by which the railroads were taken over in 1950 there was at first no change in wages and working conditions and later a small increase was granted well within the increase which had been agreed to by the operators. The railroad managements never raised serious objection to this seizure while the unions argued in every forum available to them that the operators saw no need to bargain further under the protection of the Government seizure. In the steel seizure of 1952 the conditions were reversed. As the recommendations of the Wage Stabilization Board were acceptable to the union, the union seemed to welcome seizure. The industry, however, which felt that these recommendations would be imposed on it, fought the seizure with every weapon it could command.

The attitude of the courts to the requirement of just compensation must also be considered in relation to continued collective bargaining. If the courts were to hold that normal profits are the equivalent of

just compensation while losses during seizure must be made up by the Government, what becomes of the theory that under seizure there is incentive for both unions and managements to come to terms? If this is the prevailing law on the subject, temporary seizure can do management little harm and might yield much additional benefits.

The seizures by the Government up to now have not created any effective device for equally balancing pressures, fears, and uncertainties to stimulate more effective bargaining and anxiety to reach a settlement. Nor have we been able in actual seizures to remove its attractiveness to one or the other party, although it should be noted that this is not an industry versus labor situation. Some unions have opposed seizure after experience with it while other unions have continued to approve if not to welcome seizure; some managements have tolerated seizure as it applied to them while other managements have opposed seizure on a variety of grounds even if production could be continued thereby. As employed in the past, seizure has been a device for carrying out recommendations of a Government board. If the seizure was caused by the employer's refusal to accept the recommendations, the Government usually put the recommendations into effect and made no other operating or managerial changes. If the seizure resulted from a union's refusal to accept a Government board's recommendation, the Government generally did nothing after seizure or imposed part of the recommendation and sometimes also obtained an injunction to break a "strike against the Government."

Thus, while seizure purports to be neutral, it has served one side or the other, depending largely on how the recommendations of a Government board were received. The underlying recommendations to be put into effect have determined the reception of seizure. The conclusion from the war and postwar seizures must be that seizure can stop or break strikes and provide conditions for continued production. Seizure can also have the practical effect of a dictated contract. But there is no experience that seizure has promoted collective bargaining by the parties in the dispute or resulted in speeding up the process of coming to agreement.

Experience with specific provisions in Federal and State laws dealing with emergency disputes has led some analysts to the conclusion that when the disputants have definite knowledge regarding the nature of the intervention by the Government, they deal with it in terms of the putative harm or benefit to themselves or the other party and not necessarily as a step to be avoided at all costs. It is in the belief that seizure must be made unattractive to both sides and thus to make the parties want to end it by coming to agreement that various proposals have been made which have as their purpose keeping both parties in doubt as to how any particular seizure will affect them. Such proposals were embodied in S. 2999, sponsored by Senator Morse and reported by the Committee on Labor and Public Welfare in the closing days of the Eighty-second Congress.

The purpose of the Morse bill is to widen the area of unpredictability in Government action in the expectation that this will put greater pressure on both parties to come to agreement rather than face possibly unwelcome action by the President and the Congress. Its advocates say that it would correct several shortcomings they find in the Taft-Hartley emergency procedure. First, under the Morse bill the definition of "emergency" is widened to make it possible to inter-

vene even when a stoppage is threatened in a single plant which the President deems vital to the national security, whereas under the Taft-Hartley Act, intervention is limited to a stoppage "affecting an entire industry or a substantial part thereof." Second, the President could declare an emergency to prevent a work stoppage without waiting for a recommendation for a board of inquiry, which, under the Taft-Hartley Act, has taken from 4 to 14 days in the different cases, averaging 8 days. This is to obviate the great loss possible under the Taft-Hartley Act when a total stoppage for even a few days, as in steel and aluminum, could involve weeks of additional loss in reactivating furnaces and pot lines.

The President could mediate the dispute or he might appoint an ad hoc emergency board which would recommend terms of settlement. If he did not appoint a board, wages would be frozen. If a board is appointed and if either party rejects the award and the parties fail to agree, the President may seize the property, but Congress may veto or undo the seizure within 10 days. Seizure could be backed by an injunction. The President may put into operation all or part of the contract terms recommended by the emergency board and make such terms retroactive for all or part of the period of Government occupancy. The seizure, including the imposition of the emergency board award, is not to exceed 60 days unless regranted by Congress.

The bill provides a method of compensation for seized property which is designed to put pressure on the employer to settle the dispute by bargaining and balance the afore-mentioned pressures on the employees. During the first 30 days of seizure the Government would not interfere in the income account. After 30 days, however, the Government would hold all receipts and it would be reimbursed for its operating expenses. The bill outlines standards for computing just compensation. These would take into account that Government seizure prevented a stoppage and consequent losses, and that possession could have been terminated by settling the dispute. The awards of compensation boards under the standards provided could be reviewed in the United States Court of Claims.

In the defense of the Morse bill, emphasis is placed on its advantages in speed of application, its flexible provisions which leave a measure of uncertainty and mutual risk regarding future Government action in order to encourage the parties to settle the dispute themselves, and its balancing of disadvantages to the parties in requiring work for the Government on the one hand and exposing owners and managers to possible losses on the other. It is pointed out that the President is not limited to a set procedure. He may seize before operations cease, or on the same day a stoppage occurs, or any time thereafter. It is felt that if the parties cannot count on any surely predictable action by the President and the Congress, they could not force action which might in the circumstances be favorable to them, and if the parties do not know in advance when or if they would be helped or hindered by Government intervention, they would be more anxious to settle the dispute without waiting for Government action.

The power to impose changes in wages and working conditions during seizure (except with respect to union security beyond maintenance of membership) links the procedure of the Morse bill to attempted settlement by outsiders. While the recommendations of the emergency board need not be accepted if the parties settle otherwise,

and while the President need not impose these recommendations or any part of them, the power to impose them is there, and it is reasonable to assume from experience with emergency boards that one side or the other will hold out for the recommended terms. There is no consideration of the terms which might prevail after the property is returned to the owners. If Congress approves, the Government presumably could hold the property during any long period in which an emergency situation continued.

It can be said of seizure, as it has been said of the Railway Labor Act and the Taft-Hartley Act and will be said later about compulsory arbitration, that there is no absolute assurance that workers will not strike against what they regard as unfair conditions. It has been said that these methods of compulsion make strikes illegal but they have not eliminated them. While Government seizure has generally resulted in terminating or preventing work stoppages, they haven't stopped all strikes during or since World War II. In some instances production was resumed after a short stoppage and in others not until an injunction had been obtained. Even seizure plus injunction has not always assured continuous production. After the Government seized the railroads on August 27, 1950, and the Army was directed to operate them, the Government obtained injunctions in Illinois, Ohio, and the District of Columbia. Work stoppages, ostensibly because of sickness, began late in December. The men subsequently went back to work but strikes began again in late January. On February 8 the Army ordered all men to return to work on pain of losing their jobs. This gamble worked and the men returned to work. Thereafter a $25,000 mixed civil and criminal contempt fine was imposed on the union in Illinois, and a $50,000 criminal contempt fine and a $25,000 civil compensatory contempt fine in the District of Columbia.

In the history of emergency-dispute machinery, whenever a terminal board or procedure has been provided, it has tended to be invoked by the parties as another available recourse or pressure. Many have claimed that, in the process of resorting to a final solution, collective bargaining and mediation have been reduced to mere preliminary formalities. It has also been noted that as these procedures are more frequently invoked they lose their effectiveness as means of assuring continuous production. There is evidence that this also applies to Government seizure which had early associations of great emergency but which has lost some of its aura of finality as it has become more frequently subject to challenge and unacceptability.

COMPULSORY ARBITRATION

Two types of criticism of the required use of fact-finding and emergency-board reports are somewhat antagonistic. One is that, if the immediate result of failure of the parties to compromise on an agreement is to be merely the submission of the dispute to a board rather than the losses which they will bear in a work stoppage, there is little risk for them in failing to agree, and many cases will be submitted to the board. This is said to prolong disputes, carry them to the Government in increasing frequency, and to make a sham of collective bargaining. The other type of criticism is that a fact-finding report or recommendation carries an element of compulsion,

which tends to lead to the fixing by the Government of the terms and conditions of employment.

It is, of course, the expectation that a fact-finding or emergency-board report will suggest recommendations which will be accepted as made or with slight modification. While such a board has no power to fix the terms of an agreement, and its recommendations might legally be rejected, ignored, or compromised by the parties, the recommendations were in fact made for the very purpose of suggesting a way out thought to be reasonable and fair to the parties. This is also why public opinion is expected to support such recommendations. Compulsory arbitration goes the whole way. It is a means of definitely deciding the issues in a dispute by the ruling of an arbitrator or a board of arbitration.

Arbitration by an outside individual, umpire, or board is now widely used in the interpretation of application of existing agreements. For years many union contracts have provided for arbitration for these purposes and for the final settling of grievances. Arbitration is much less frequently used in writing new contracts or in changing the terms of agreements. Occasionally, however, when the parties have failed to reach a settlement by direct negotiation, with or without the services of a mediator, they will agree to submit the dispute to an arbitrator. When this is done they agree in advance that the arbitrator's decision will be accepted as a settlement of the issue. A work stoppage is averted because the parties are willing to forego a test of economic strength and to accept instead the judgment of a third party on the issues remaining in dispute. The procedure is used quite sparingly, however, because both parties are generally not satisfied to be bound by the uncertain or unpredictable decision of a third party. During the period following World War II no dispute of a national-emergency character was submitted voluntarily by the parties for a binding final decision, although the substance of new contracts has been so determined a number of times in, for example, the textile industry.

No new law is required to substitute decisions arrived at by voluntary arbitration for decisions which are determined by a test of economic strength. If the industries and unions in the industries of national-emergency potential were willing to submit disputes over the terms of new contracts to arbitration when bargaining fails to produce a settlement, there could be no work stoppages in these industries. But this is begging the question, as the representatives of the parties in these industries have shown no increased interest in the arbitration of new contracts. The question then is whether, in a dispute where the national health or safety is imperiled, the parties be required by law to submit their differences to arbitration and whether appropriate and enforceable sanctions should be applied, as in other legislation, for subsequent noncompliance or illegal action. (The constitutional question will not be discussed.)

As indicated in previous sections, there are already numerous restrictions imposed on the parties in their joint dealings. Many of these are of the type which require the filling of forms, the allowance of time intervals before stoppages could occur, the use of certain procedures and facilities. Some, however, have the effect of a compulsory settlement of certain issues in industrial relations; for exam-

ple, the determination of representation questions, the prohibition of the closed shop, and of jurisdictional disputes and secondary boycotts. Strikes for these purposes are now proscribed. In national-emergency disputes procedures are provided for collective bargaining, mediation, fact finding, and voting on the employer's last offer. There is a compulsory waiting period of a maximum of 80 days. Thereafter the parties can legally have recourse to a test of economic strength.

Under compulsory arbitration these or similar provisions would be continued, but it would be illegal to strike or lock out in an effort to force a settlement. Instead, the settlement would be made by an arbitrator or a board of arbitration set up for the purpose of making final and binding decisions.

In all the proposals discussed thus far in this report reliance is placed principally on collective bargaining and the coming to agreement by the parties. The devices of mediation, waiting periods, fact-finding reports, injunctions, even seizure, are interposed both to avert stoppages and to facilitate coming to agreement, even if they do not always have the effect within the allotted time. However, agreement is the terminal point, and the process is stretched out until there is agreement.

In compulsory arbitration, agreement by the parties on all terms at issue is not necessary for a final termination of the dispute. If the parties will not agree to accept the findings and recommendations of an arbitrator selected by them or with the arbitration award of a Government board, the findings of the latter would be imposed on the parties in the way a minimum wage is imposed by law. This policy of dictating a settlement on the parties is certain to have a profound effect on collective bargaining and on the institutions and practices related to it.

With occasional exceptions on the part of industry representatives in public utilities and railroads, spokesmen for industry and labor have been outspoken in their opposition to compulsory arbitration as a means of averting work stoppages, even in industries whose continued operation is essential to the health and security of the Nation. Without reviewing in detail the numerous specific points which have been made, it may be said that the opposition rests on arguments regarding the unfairness of prohibiting the exercise of economic power and the alleged incompatibility of compulsory arbitration with collective bargaining, the fear of the consequences of Government determination of wages and other labor costs, and its general unworkability as proved by past experience. Those who favor compulsory arbitration are not impressed with the force of these arguments, or they regard them less seriously in the light of the alternatives which permit a stoppage of production or service of indefinite duration where in fact we cannot or will not tolerate such stoppages. They aver that collective bargaining can continue to be maintained precedent to arbitration and to influence the results of arbitration, and that equivalent results can be obtained for labor and industry by a soundly developed system of compulsory arbitration as is now obtained at much greater cost to our society by the miscellany of improvised methods plus work stoppages which periodically take their toll of the national health and security.

A primary consideration is whether or not a system of compulsory arbitration does effectively prevent work stoppages in a society of

free institutions. The experience of Australia and New Zealand, where compulsory arbitration was not limited to national-emergency situations, is that, despite the penalties imposed by the law, compulsory arbitration has not in fact eliminated strikes. These countries publish strike statistics which show that their arbitration laws have had no appreciable effect in reducing work stoppages and also that their record of industrial disputes involving work stoppages is no better than the record of the United States. Considerably fewer days are lost per thousand workers in New Zealand than in the United States, while considerably more are lost in Australia than in the United States. The time lost per thousand workers in New Zealand is nearly as great as in Britain, which does not normally have compulsory arbitration. Moreover, it is felt by some that, because of the existence of compulsory arbitration laws in Australia and New Zealand, strike statistics probably are understated.

When arbitration awards are not accepted and strikes occur in these countries, penalties are generally not enforced. There have been occasional attempts at the application of criminal sanctions, and then penalties have simply not been applied for long stretches of time. Australia stepped up her penalties in wartime, but the number of stoppages increased. As a result of a strike against an award in wartime in New Zealand, 213 workers were incarcerated in 1942. "The farcical situation produced by the mass trial, the lack of sufficient prison accommodations, and the fact that urgent work was held up while the men served their sentences, has prevented any repetition of prison sentences" (A. E. C. Hare, Industrial Relations in New Zealand, p. 213, 1946). Occasionally small fines have been imposed for illegal strikes. But neither criminal penalties nor fines have become effective deterrents against work stoppages. Thus, while the effect of compulsory arbitration on the number of strikes in Australia and New Zealand has not been important, the imposition of compulsory arbiration has resulted in the determination of wages and working conditions by the Government and the extension of the arbitration awards throughout the industries and the areas of the country.

Outside of the informal but functional compulsory arbitration for war plants during World War II, when the orders of the National War Labor Board were more or less effectively enforced by seizure if necessary, our own experience with compulsory arbitration has been limited to the Kansas Industrial Court Law of 1920 and some arbitration laws passed in several States since 1947. The application of the Kansas law was not confined to a few vital industries and it was declared unconstitutional by the United States Supreme Court with respect to a case involving a small packing plant. The State laws passed and amended since 1947—generally regarded as strike-control laws—are not all, strictly speaking, compulsory arbitration laws, although they have been so classified in some reports on the subject. Some are fact-finding laws; others are seizure laws or combine fact finding and seizure. Wisconsin, Indiana, Pennsylvania, and Florida passed compulsory arbitration laws for public utilities, variously defined; the Minnesota law provides for compulsory arbitration in charitable hospitals; New Jersey combines compulsory arbitration with State seizure of public utilities.

The constitutionality of these laws is in doubt, particularly since the Wisconsin law was declared unconstitutional by the United States

Supreme Court in February 1951 on the ground that it sought to abrogate the right to strike, which was protected for workers in interstate commerce by the Taft-Hartley Act. This decision, invalidating a full-fledged compulsory arbitration law which had handled 43 cases and experienced two public-utility strikes in its life of 3½ years, will probably invalidate some other State compulsory arbitration laws similar to the Wisconsin law, as has already happened in Indiana and Florida. However, the Supreme Court decision in re the Wisconsin law leaves open for legislative consideration the question of policy which would be involved in amending the Taft-Hartley Act to require compulsory arbitration for a public purpose in a limited number of industries. We proceed without further reference to the constitutional question.

There have as yet been very few studies or reports on the operation of the State compulsory-arbitration laws. The observations which follow are drawn from four documents which have the common characteristics of disinterestedness, objectivity, and first-hand investigation on the spot and by interviews, and the sifting of conflicting data by persons of professional competence. These are: Strike Controls in Essential Industries, by Herbert R. Northrup (National Industrial Conference Board, October 1951); Compulsory Arbitration of Utility Disputes in New Jersey and Pennsylvania, by Robert R. France and Richard A. Lester (industrial-relations section, Princeton University, June 1951); Compulsory Arbitration in New Jersey, by Lois MacDonald (graduate division of public service, New York University, September 1949); The Handling of Emergency Disputes, by Thomas Kennedy (Proceedings of the Industrial Relations Research Association, December 29, 1949). We shall present the results of their investigations in the following order: the effects on collective bargaining; the effects on the reasonableness of the settlements; general economic effects; and the effects on continuity of the operation or the service.

In general, the State compulsory-arbitration laws provide that the parties should continue to make every effort to settle their disputes by collective bargaining and mediation. If these means fail to bring the parties to agreement, compulsory arbitration is invoked by the Governor. The various laws differ as to the type of board and the method of selecting arbitrators. The most common device is a three-man, tripartite, ad hoc board, the Governor selecting the public member; but there are also all-public boards. It is generally felt that, if each party to the dispute can select one arbitrator, the pressure of collective bargaining can continue within the arbitration board and that to that limited degree collective bargaining may have a greater influence on the settlement.

Some States have tended to apply their law in disputes where covered industries were involved, even though there was not much danger of imperiling the health or safety of the State in a particular dispute, such as disputes involving bus operators in small cities, small Rural Electrification Administration cooperatives, accounting employees of telephone companies. It was noted in the United States Supreme Court decision invalidating the Wisconsin law that compulsory arbitration has been used not as emergency legislation but as "a comprehensive code for the settlement of labor disputes between public-utility employers and employees."

It seems that the willingness to invoke the law encouraged its use by the parties. Some unions and employers felt that they could do better under arbitration than they could in continued direct negotiation, and they willingly resorted to arbitration even though they may have maintained official opposition to compulsory arbitration. This tended to make their collective bargaining and mediation perfunctory. In several States where there had previously been a good record of settling disputes in public utilities without recourse to outside agencies, the effect of the law was to send most of the cases to arbitration.

The existence of a compulsory-arbitration law tends to make settlement by collective bargaining more difficult. A union is pretty nearly certain that the arbitration tribunal will not offer less than the last offer the employer has already voluntarily made. They would feel that there is practically no risk involved in attempting to obtain more by a final submission to arbitration. The union is also more reluctant to trade off some matters in a dispute when these might be worth something additional in arbitration. The employer in turn becomes more reluctant to make concessions up to what he might have made to avoid the cost of a strike. The reaction of the parties to the procedures and the results of arbitration is to avoid compromises and concessions which would leave them worse off when the arbitrators come to consider the differences still remaining.

Failure of the parties to make the voluntary concessions toward a reasonable settlement lest the arbitrator be able to split the remaining differences between them in a way which would be less favorable to them thus weakens the effectiveness of collective bargaining. They might speculate that something more might be gained by submitting the case to arbitration. Even if they gain no more, at least the onus of a disappointing settlement is not borne by the representatives of the parties. Moreover, it might be easier to persuade a rate-regulatory body of the necessity for compensatory rate increases when higher labor costs have been ordered by a Government board than if these obligations were assumed voluntarily. For all these reasons, settlements dictated by arbitration tribunals tend to grow in relative importance to settlements determined by collective bargaining. The ever-present possibility of reaping a benefit removes the desire to negotiate to a conclusion without employing all the means and facilities available.

From the angle of the primary purpose of compulsory arbitration—to maintain production and service in vitally essential industries—this trend to go all the way to arbitrate does not necessarily destroy the usefulness of compulsory-arbitration laws. It has in fact prevented work stoppages, which is the primary purpose of the legislation, although there can be no certainty that stoppages would actually have occurred in these cases in the absence of a compulsory-arbitration law. The laws have not been in effect for a long time, and they probably have not yet had their full effect; but in the process the method of arriving at the terms of a new agreement is changing from collective bargaining to arbitration. It is pointed out in the Northrup report that there has been readier reliance on compulsory arbitration in an industry like the telephone industry, where the union is relatively weak and where it is able to obtain better results by arbitration than it can by collective bargaining, and in the urban transit industry, where the union has for years been more than willing to substitute voluntary arbitration for collective bargaining, and in connection with hospitals in Minnesota, where collective bargaining had been nonexistent and where organization is being built on the use of arbitra-

tion. The forces effective in collective bargaining remain in the background; they have an influence on the negotiations; and they are, of course, not without effect on the judgment of arbitration tribunals.

We come then to the reasonableness of the "settlements" arrived at by arbitration. Among the arguments for compulsory arbitration it is often said that industrial disputes, like other civilian disputes, should be settled in the courts. The analogy has merit when the arbitration deals with the interpretation of a clause or a provision in an existing agreement; but where is the statute, and how helpful is the past when new demands are being made? Above all, what are the agreed-upon principles of economics and industrial relations which will serve as a uniform guide for arbitrators? In wage determination alone, ability to pay and productivity, the reasonableness of differentials, cost of living, and internal and external inequities chase each other around for recognition and weighting. With respect to conditions of employment, often intricate and peculiar to different industries, or fringe issues of greater and greater variety, or the multiplicity of shop rules and regulations, one man's meat could be another man's poison. Either of the parties might have been willing to take the loss of a work stoppage rather than yield on one or more of the issues involved in any of these areas of controversy. Can all of them now be left to the unguided judgment of outside arbitrators, ad hoc or with some fixed tenure?

If there is agreement on the criteria to be followed by an arbitrator in arriving at his decision, this greatly reduces the surprises and risks of arbitration. While such criteria would be difficult to enumerate and to place in relative importance, agreement on criteria at least in a broad way is a prerequisite for the arbitration of disputes. Otherwise, decisions based on the selection of different criteria by different arbitrators will furnish even greater inequities and inequalities as they make themselves felt in different industries and sections of the country.

Several of the States have recognized this problem and have provided standards for arbitrators in their arbitration laws. The New Jersey law was originally passed on March 26, 1946. When a test case finally came to the New Jersey Supreme Court it sustained the statute on all grounds except the lack of standards for the guidance of the board of arbitration. The act was then amended to include factors to which the arbitration board shall give consideration and weight in making its determinations of issues. The standards in the States which have them run in terms of maintaining wages and conditions of employment comparable with those maintained for similar work and skills under similar conditions by other employees in the same or adjoining market areas; the maintenance of the relationship to wages and working conditions maintained by all other employers in the same labor-market area; over-all compensation, including all fringe benefits and employment security measures to be considered in setting wage rates; regard for other factors traditionally taken into consideration in collective bargaining and arbitration.

The application of these or similar standards offers no insuperable obstacle, although there are sure to be differences in evaluation among the economists, lawyers, college professors, and public officials who traditionally make up the arbitration boards. Such differences also arise out of market forces, competition, and collective bargaining; and the results of these forces can hardly be ignored by a going arbi-

tration tribunal. The opportunity to appeal for judicial review would serve to guarantee appropriate hearing, the proper execution of the standards in the law, and decisions based on evidence in each case.

The data furnished by France and Lester in their study of compulsory arbitration of utility disputes in New Jersey and Pennsylvania show that there has been no great disparity between the terms obtained through compulsory arbitration and the terms obtained through negotiation. The awards were usually as good, and in some cases better than, wage increases obtained under collective bargaining. This is substantially the conclusion arrived at by Miss MacDonald in her independent study of the operation of the New Jersey law. The basic reason is probably the similarity of the factors employed in arbitration to those which have their effect in direct negotiation.

A Federal compulsory arbitration law would, of course, deal with a wider range of industries than are covered in these State laws. If comprehensive, the law would quite certainly be applicable to railroads, shipping, coal, steel, and other metals, depending upon conditions at the time of a threatened stoppage; perhaps airlines, chemicals, electronics, communication, and various plants making munitions or their components. The range of industries would be greater than within the States and the comparisons to be made of wages and working conditions would leave wider latitude. Fact-finding boards, emergency boards, and wage-stabilization boards have been grappling with these problems for over a decade. Under different stabilization policies they have come up with recommendations which, while not always accepted, were rarely, if ever, wide of the agreement finally made even after stoppages lasting several weeks or months.

However, many of those who fear the long-run consequences of the determination of wages and working conditions by the decisions of Government boards think that the inevitable trend will be for the Government to dominate all major economic decisions. From past experience they believe that the Government will take profits into account in determining wage and other cost adjustments, and that the control of profits would follow inevitably. For the Government will have to estimate the level of profits which can be maintained after new costs are imposed. Judged by experience, it is expected that such estimates will be concerned with industry averages, total profits in the industry, and over-all price trends versus wage trends, rather than the consideration of profits as a reward for enterprise and efficient operation. They visualize that the control of labor costs and profits would ultimately involve permanent control over the minutiae of prices in relation to volume and control over all the operations of business which determine costs. Conceivably this might involve subsidies, if the increased costs could not be recouped even by higher prices. Ultimately this could lead to more detailed regulation of management practices, finances, sales policies, technological changes, new products and processes, resulting eventually in complete Government control of industry, if not Government ownership. The Government would then be in a better position to deal with interindustry questions as to how much competition it would permit, what new businesses and expansions it should allow or prevent, what losses could be taken and for how long.

Whether or not all these economic effects would follow the imposition of compulsory arbitration in a selected group of industries and

plants cannot be affirmed with any certainty. This has not happened in Australia where the system of Government arbitration covers far more territory than would be covered in emergency disputes legislation. Yet there is a general foreboding that this would eventually happen, expressed by a very large number of responsible and thoughtful analysts who have discussed the question of the compulsory arbitration of industrial disputes.

A final question and a crucial one is whether compulsory arbitration has in fact assured continuous production and what sanctions could be imposed for refusals to comply with arbitration awards. For even if it were established that compulsory arbitration means less self-government by industry and labor, that it is an incursion on the freedom of the parties, that it extends the arm of Government beyond what we have been accustomed to, this must be weighed against the cost of interruptions in production in industries and services upon which, by definition, the health and safety of the Nation depends. Many who have feared the possible consequences of compulsory arbitration recited above have nonetheless come to favor such a program as the only certain means of assuring continuous production.

Penalties in our State laws include imprisonment, fines, and injunctions. (It is to be remembered that a number of State laws combine the procedures of seizure with compulsory arbitration; for example, in New Jersey, the penalties are for violations during seizure.) New Jersey, the State with the most extended experience, at first provided no penalties for refusal to abide by the terms of the law even under State possession of a public utility. The statute at first depended on the force of public opinion to induce the parties to accept the recommendations of the arbitration board and to prevail on employees in public utilities to refrain from striking when the State was in possession of the plants. After exactly 1 year's operation, during which there were seven strikes in public utilities, the act was amended to include both fines and imprisonment as penalties for violation. When it was attempted to employ the criminal sanctions during the telephone strike the union obtained a temporary restraining order against enforcement. At that very time the act was again amended to lighten the criminal sanctions by deleting the penalty of prison sentence and by providing that those aiding and abetting violators be guilty of misdemeanors and fined for each day of offense. Subsequently the State supreme court sustained the statute in its entirety, as already mentioned, except for its lack of standards for the guidance of the board of arbitration. The laws of Pennsylvania, Florida, and Indiana contain both types of penalties. All four States also permit injunctions to be issued to prevent violations of the law.

In States in which information is available there have been violations of the law and occasional use of some of the sanctions. In New Jersey, three officers of the telephone operators' union were arrested for continuing the strike against State seizure in 1947, but the charges were dropped by the State and imprisonment was eliminated as a penalty in the law. Except for the temporary imprisonment of these union officers, no penalties under the law have ever been invoked. However, the law's provisions have generally been complied with. In addition to the 1947 telephone stoppage there were short stoppages in a gas plant during seizure in January 1949 and in December 1950.

In the first of these two cases the union threatened to call a strike against the company if it tried to install a job-evaluation plan ordered by a statutory board of arbitration. The Governor avoided this threat by continuing State operation. There were about 10 other stoppages in the period before the act was amended to include penalties, but the man-days lost, except for the telephone strike, were quite insignificant. With reference to the first 3 years of the operation of the New Jersey law, Miss MacDonald concluded that the consumers did actually benefit by continuous service, even where a short stoppage occurred. She observes, however, that the threat of a strike was necessary to bring the arbitration machinery into play and was by no means a clear indication that a strike would have resulted if the arbitration machinery had not been available.

The law has been invoked only seven times in Pennsylvania, in only three of which did the parties wait for an arbitration award before the dispute was terminated. The opinion is advanced by France and Lester on the basis of interviews and investigation that the act apparently prevented strikes which would have occurred otherwise and that continuity of operations resulted in part, at least, from the establishment of these penalties.

In the other States, the material at hand is too sparse for any generalization to be made, except that stoppages have generally been avoided in industries where they are never very common.

Officially and on the record, the representatives of both labor and management still generally oppose the continuation of the compulsory arbitration laws under which they must function. In States where compulsory arbitration of utility disputes is in force, the representatives of the parties tend each to believe that it operates to the advantage of the other and militates against effective collective bargaining.

While enthusiasm for compulsory arbitration of disputes in public utilities is thus restrained, a growing number of observers seem to think that one form or another of compulsory settlement—that is, settlement without work stoppages—will have to be supported in situations where the national health and safety are directly jeopardized by a work stoppage. This support is developing despite the known inadequacies of compulsory arbitration and its adverse effects on genuine bargaining by the parties. The maintenance of unhindered collective bargaining in the preponderant sector of the economy where there would be no interference with the freedom to strike or lock-out gives some assurance that the results of free bargaining would continue greatly to influence, if not actually to determine, the arbitration awards. It has been observed that many settlements have finally been made after prolonged strikes which were not markedly different from fact-finding proposals made before the stoppage occurred. Where other devices, like seizure and injunction, were used to gain continued production, these added nothing substantial to the final settlement and as a practical matter only put off the time of settlement.

An imposed decision is of course not as acceptable as one which has been worked out by the parties as the best they could do under all the circumstances. While they may not really like all the terms of the agreement they finally sign, any more than they may like a decision of an arbitrator, they are conscious that in a voluntary agreement they have participated to the full extent of their power, and they know what the decision will be when they have agreed to it. They might be

able to obtain a quid pro quo for something surrendered in direct negotiation; but in arbitration they have no way of knowing whether the decision will give them the results which they might have been able to obtain. And if a Government board must decide all the disputes which the parties do not resolve or settle, the feeling that they are being subject to arbitrary decisions will grow. This could eventually greatly weaken the forces of compromise and accommodation which is at the center of collective bargaining and make it necessary for the arbitrator to settle not just one or two points remaining in disagreement but all the multifarious provisions of a union contract. This is what is meant by the frequent assertions of representatives of both unions and managements that compulsory arbitration substitutes Government dictation for free collective bargaining.

To remove some of the odium against compulsion, it has been suggested that the Government not set up a definite arbitration board or procedure, but that it simply make it mandatory for certain industries whose continuous operation is essential to the national health and safety to submit specific issues of their dispute to arbitration which they have not settled by themselves. The alternative would be unspecified Government intervention for which the parties cannot prepare. Under such a program the parties would be encouraged to bargain out all their differences and to submit only definite and limited matters to an arbitrator of their own choosing and under their own instruction.

The greater use of voluntary arbitration to settle issues in emergency disputes would be a form of settlement within the broad confines of collective bargaining itself. It means that agreement is not far off, since there is agreement on what is to be considered in resolving the remaining issues and perhaps even on how they are to be considered. Everyone would agree that such submission to arbitrate would be preferable to a compulsory settlement of open-end disputes which is envisaged under compulsory arbitration statutes. But if voluntary arbitration is required by law, would it not take on the characteristics of compulsory arbitration after all?

Others have suggested that employees in the industries where the right to strike is restrained by the substitution of an arbitration decision be given a special status which would assure them of treatment at least as good as that obtained by the most effective collective bargaining. Under the compulsory arbitration laws in the few States which have them, boards are required to take into consideration the wages and working conditions prevailing in other industries and utilities for the different occupations. However, no State has made provision that any additional compensation shall be paid or higher standards be maintained for workers in those industries where the right to strike is restrained. All that such workers now have is the assurance that their demands will be heard and adjudged by a board of arbitration which takes historical relations and prevailing practices into account. They would not, however, be pioneers in obtaining better terms than have been obtained in industry generally. Under this proposal their conditions would be periodically reviewed with the intention of rewarding them above the standards maintained in industries where the right to strike is unrestrained.

A variant of compulsory arbitration has been suggested as a feasible method of continuing production and service in industries essential to

the health and safety of the Nation by Professor Slichter. As this proposal is based on a careful consideration of the methods previously employed and their shortcomings, it is presented for consideration as a modified form of compulsory arbitration.

Under the Slichter proposal the Government would have authority to declare an emergency and to require the parties to maintain the status quo for 30 days after negotiations have broken down, with the possibility of reasonable extension. During this period the parties should be required to show why they should not submit their dispute to arbitration. It is felt that the show-cause hearing on the refusal of arbitration would stimulate the parties to settle their differences by bargaining or by voluntary arbitration.

If a show-cause hearing on the reasons for refusal to arbitrate seemed inappropriate or if it failed to produce an agreement to arbitrate, an emergency board would be appointed by a nonpolitical officer of the Government from a panel of arbitrators selected in advance by representatives of labor and management.

If one party or both reject the recommendations of the emergency board, the President would be authorized to require the parties to try out the recommendations for a period of 6 months, unless they agree to different terms. This would be the basis on which production would continue. The employer would be required to maintain the wages and working conditions recommended by the emergency board and would be forbidden to enforce other wages and conditions by a lockout or to concede other wages and conditions in order to end a strike. Any employee not satisfied with these terms could quit his job, but interference with persons willing to work on these terms would be forbidden.

During the 6-month period of an enforced settlement, the parties would be expected to start new collective-bargaining proceedings to determine what wages and working conditions would be put into effect at the end of the 6-month period. If they are satisfied in practice with the enforced decision, they might choose to continue it, or they could work out something more acceptable. Professor Slichter does not appear to contemplate that there might be no agreement at the end of the 6 months of the arbitrated contract. If disagreement persists, decisions of arbitrators continue to determine wages and conditions of employment for short periods during which the basis of disagreement is reviewed in the light of the developing situation.

LIMITATIONS ON THE SCALE OF BARGAINING

This section deals with the problems involved in attempting to avert national emergency strikes by the device of limiting the size of the bargaining contestants and the scale of their operations. It does not deal with the question of the economic power of labor organizations or with the economic aspects and effects of industry-wide or association bargaining.

It is argued that if it were made illegal to bargain in units which are so large as to include substantially the entire output of an industry, we would still have fair collective bargaining, but we would avoid any possibility of interruptions in production and service on a scale which would endanger the national health and safety. Stoppages endangering the Nation would be averted by assuring that at no time could pro-

duction be stopped in which more than a small or limited proportion of the total output is produced. Then the remaining production in the numerous plants not struck would be available to the public. Indeed the stepped-up production of the unstruck plants would serve as pressure on the management and employees of struck plants to come to terms. Anyway, it is argued, even if such plants were out of production, the adverse effects would be limited to the participants and perhaps some others indirectly affected; but this could never imperil the national health or safety. The emergency is created by the nearly total stoppage of production of an entire industry which transforms a private dispute into a public peril. The way to avoid such emergency and to preserve the freedom of the parties to strike or lock-out is to limit possible stoppages to a small segment of any industry—a single plant, company, or market area.

An effort to limit the size of bargaining units was made in the Hartley bill in the House in the Eightieth Congress. The purpose of this provision, which was not carried either in the House or the Senate, was to limit a bargaining agent typically to a single employer by forbidding the National Labor Relations Board to certify one union as the bargaining agent for the workers employed by two or more competing employers. Employees of competing employers would have been permitted to have had a common bargaining agent only if the bargaining agent represented less than 100 employees of each employer and the plants of the competing employers were less than 50 miles apart. The purpose of the exception was to permit multi-employer bargaining in areas and communities where small industries and services abound. For industry in general and for the great bulk of manufacturing establishments, mines, utilities, and services engaged in interstate commerce, a union of employees in a plant or company would have to be independent of control by the national union. Unions which represented employees of competing employers would not be prevented from affiliating with national organizations or federations; but, with respect to collective bargaining or concerted activities and strikes to enforce demands, each local would be required to stand on its own. The national union would be shorn of all power to control the bargaining of locals, to set standards, or to require approval for local union action. Central direction or approval of local union action could not be sought directly or indirectly. Except for the exceptions noted in firms employing fewer than 100 employees and located within a radius of 50 miles, the single employer unit or the single large company of whatever number of plants would have become the largest unit permitted for collective-bargaining purposes. Since not even two competing employers could be struck at the same time, as it would be an unfair practice for their respective local unions to so contrive, a stoppage in the production of any substantial part of an industry would be thus prevented, except, of course, to the extent that a particular company produced a substantial part of the output of an industry.

While nothing was said in the Wagner Act about any particular form or scale of bargaining, the Taft-Hartley Act makes it an unfair practice for unions to coerce employers in selecting their bargaining agents, thus seeming to support the choice of a single representative by competitive employers in an industry. There has been no governmental interference with the different bargaining forms which the

parties developed for themselves in their negotiations. The parties determined for themselves whether they would bargain on a craft basis, or on an individual plant, company-wide, or multicompany basis. The freedom in selecting the form of collective bargaining has made possible the development of the variety of bargaining procedures and structures which exists today.

As of 1950, the Bureau of Labor Statistics estimated that of all workers covered by agreements, 67 percent were in single-employer bargaining units (28 percent in single-plant units and 30 percent in multiplant units); while 33 percent were in multiemployer units (23 percent in local multiemployer units, 6 percent in multiemployer regional units, and 4 percent in Nation-wide multiemployer units). There were marked geographical differences in the prevalence of different forms of bargaining and also differences depending on the type of industry. Multiemployer bargaining predominated in lumber, printing, and publishing, apparel, coal and other mining, transportation of various kinds, service trades and miscellaneous nonmanufacturing. The Bureau's recurring studies show that the trend toward multiemployer bargaining units is increasing.

But even the combined aggregate of multiplant and multiemployer bargaining does not represent the full extent to which unions have been able to obtain uniform terms for their membership in the various categories of work regardless of where they are employed. By the device of the wage-leader principle or pattern bargaining used in such industries as steel, automobiles, and meat packing, and by the use of a form contract in trucking and numerous smaller industries, the principle of uniformity is promoted on a greatly extended scale.

It is inevitable that unions will make similar demands on the several plants of a single company and on competing companies in an industry. They have done so all the time, and as union agreements have come to cover the greater portion of more and more industries, standard conditions of employment have come to prevail in each industry. The determination of wages and working conditions in this way, whether or not a formalized pattern of bargaining has been followed, is a far more common procedure in collective bargaining than is industry-wide bargaining, in which an entire industry and all the workers in it participate in the negotiations through their respective representatives.

Much of the criticism of multiemployer bargaining thus seems to be a criticism of the broad results of trade-unionism in establishing standard conditions over industries in the same general product market. Before the passage of the Wagner Act and for a while thereafter, many employers argued that they were willing to deal with representatives of their own workers but that they saw all sorts of mischief in having to deal with outsiders not employed by them. They argued that such outsiders would be uninformed about the special problems of the locality and plant where their particular workers were employed and that unions would sometimes be more interested in other areas. Union spokesmen argued that "outside" unions were necessary for effective collective bargaining not only because independence of the employee representative from the employer was a sine qua non of genuine bargaining, but also because "union conditions" could never

prevail unless they covered practically all employers in competing industries. Thus even before the passage of the Wagner Act unions developed their "demands" with reference to conditions which prevailed in other parts of the industry located in other sections of the country.

A valuable part of the equipment of these agents of the union was the knowledge of conditions in other plants in other areas of the country. In their negotiations they "traded upward" in the light of the best conditions existing and obtainable in firms with which they had dealings. Standard union rates for different classes of work were established with the goal of uniform wage rates—"equal pay for equal work." This also met the needs of employers who were more willing to accommodate themselves to union conditions if their competitors were subjected to the same conditions and costs.

The factors which have increased the influence and power of the national unions and promoted a trend toward the taking over of the bargaining by the national unions have their roots in the basic principle of unions to eliminate substandard conditions. The trend was also aided by the growth of big business, national markets, and of bargaining over more numerous conditions and welfare provisions. In addition, the greater skill and experience of national officers and the research facilities available to them have increased their influence in negotiation. It is now by no means necessary to have multiemployer bargaining for the officers of the national union to "take over." There are, of course, many local agreements, negotiated by a single company with a local union, but the growth in the influence of the national union in all collective bargaining has been unmistakable. Even where a local union ostensibly does the bargaining there are other ways in which a national union may exert its influence on the local; such as having a representative of the national office present during negotiations, the drawing up of a standard or uniform agreement by the national union, or requiring the approval of all agreements by the national office.

The nature of collective bargaining being to deal with competitive employers in the same way, one might question what would be attained by a prohibition of bargaining by groups of employers or associations. The only industries in which bargaining is now on a basis which covers all or a vital segment of an industry are railroads, coal, glass, pottery, stove making, wallpaper, elevator installation and repair, and installation of automatic sprinklers. Of these, only coal or railroad stoppages could affect the national health and safety, and a strike on one or two of the important railroad systems could be almost equally harmful as a national stoppage. There are 15 other industries in which bargaining is conducted on a region-wide basis. Of these, only nonferrous metals, maritime, longshoring, intercity trucking, and shipbuilding are of the type where stoppages could, under certain conditions, create a serious emergency. In several of these, particularly in maritime, longshoring, and intercity trucking, employers' insistence on multiemployer bargaining is hardly any less than that of the unions. Otherwise the really large volume of association bargaining is on a city-wide or local-area basis and covers the building trades, the needle trades, and the numerous light manufacturing industries and service trades which flourish in urban centers. Association bargaining has been found to be necessary in most of these

industries to give some employers a more effective voice in bargaining, to save time, secure compliance to union standards, and to control competition with respect to labor costs. The prevention of such bargaining by law would not solve the problem of emergency disputes because these industries are not of that nature, but it might effectively cripple the effort to maintain union standards in these numerous industries.

Union policy with respect to the area or scale of bargaining appears to be quite pragmatic. Where unions do not have to deal with employers' charges that lower wages in competing plants enable those companies to take away their business, they seem to remain fairly satisfied to deal separately with the different companies. Unions in such industries as steel, aluminum, electrical, automotive, and machinery have been successful in obtaining practically equal pay for equal work, with perhaps some greater opportunity to make necessary exceptions.

To prevent stoppages jeopardizing the national health and safety by limiting the size of the bargaining unit, it would thus be necessary not only to outlaw industry-wide bargaining but also all association bargaining, regional bargaining, bargaining on a company-wide basis for multiplant companies, and bargaining on a union-wide basis. In the leading manufacturing industries, like metals, chemicals, rubber, and machinery, where the representative companies typically own numerous plants, company-wide bargaining is now the most common form. A stoppage of production in some of the particular companies in these industries could jeopardize the national health and safety. This could be the case not only in many utilities serving numerous essential companies but also if stoppages occurred in some of the large companies manufacturing essential items. As this is being written, the President of the United States has invoked the emergency provisions of the Taft-Hartley Act in a strike affecting only one of the several plants of the American Locomotive Co. It would seem, therefore, that requiring bargaining on a local basis would not strike at all the situations where an emergency dispute could develop, but it would be legislation which would determine the form of collective bargaining in industry in general without regard to a national emergency. It is a serious question whether the entire course of collective bargaining can be reversed and whether it should be, if the purpose is solely the effective handling of emergency disputes.

Considering the historical development of unionism and collective bargaining, could the policy of legally requiring bargaining on a plant-by-plant or local basis be enforced and, if enforced, would national emergency strikes be thus avoided? Even if formal multicompany bargaining were legally required to be broken up as proposed, there would probably be more change in appearance than in reality. It isn't likely that several hundred completely independent and unassociated new contracts would be drawn up in the coal or steel or apparel industry in the course of a year. Moreover, should stoppages result from the bargaining, the overlapping of terminal dates could involve substantial parts of any industry. Each union would have to know—and avoid—the terminal date of all contracts signed by other unions in the industry. Local unions would have to be judged in contempt of the law if they thought as other local unions did and held out for the same terms. If unions could survive

and continue to function effectively under this type of control, how could they effectively meet the employers' complaints of unfair competition? Would there not be the strongest inducement to continue as heretofore with only such formal changes as are required to meet the legal requirements?

In many industries a leader or several leading companies act as informal representatives of their industry. Bargaining in the steel industry is on a company basis, but the leading companies in the 1952 negotiations associated themselves voluntarily in a bargaining group. In meat packing, one union is affiliated with the American Federation of Labor and the other with the Congress of Industrial Organizations. They each sign separate agreements with the Big Four which expire on the same day. The agreement signed by the separate companies are uniform not only for each of them but for the other companies in the industry as well. In the petroleum industry bargaining is on a company basis and divided between different unions affiliated with the American Federation of Labor and the Congress of Industrial Organizations. Yet in 1952 this did not prevent simultaneous strikes which shut down the greater part of the industry. The disputes with all employers were settled quickly after settlement for one company was approved by the Wage Stabilization Board. So it seems that even company-wide bargaining is no guaranty that there could not be a near industry-wide stoppage. Will the leader principle and pattern bargaining also have to be outlawed? Will the Government undertake the responsibility of fixing appropriate and properly spaced terminal dates in the different industries? If not, how will stoppages be avoided when negotiations break down in different companies even if they may not legally deal jointly with the unions? Have we in fact not already had industry-wide stoppages without industry-wide or multiemployer bargaining in the steel, automotive, electrical, and agricultural equipment industries?

It thus appears that the prevention of industry-wide bargaining or any requirement of law limiting the scale of bargaining would not necessarily reduce the hazard of stoppages so serious as to imperil the national health and safety. That such measures would in many cases reduce the bargaining power of labor by requiring weak locals to stand on their own limited strength in bargaining with large employers seems certain. That they would in other cases reduce the small employer to helplessness in dealing with a strong union is equally certain. A ban on stoppages covering a large part or all of an industry would be difficult to enforce because such stoppages could result from other forms of bargaining than industry-wide bargaining. To enforce a prohibition against multiplant stoppages the arm of Government would have to stretch into many directions where heretofore the parties have been free to make their own arrangements. The advantages which certain employers and unions say they have found in multiemployer, association, or region-wide or industry-wide bargaining in stabilizing labor costs and conditions over a competitive area, in coping with industry-wide problems, and in equalizing bargaining power would be jeopardized, although the unions would doubtless seek to attain these ends by other means. The time, effort, and cost of collective bargaining would probably increase. The build-up of local unions and the weakening of nationals will make for competitive

demands among unions in the same or related industries and reduce a disciplinary, and sometimes far-seeing, influence.

Many who advocate a ban on multiemployer or on regional and industry-wide bargaining do not do so only because of concern about its possibility of causing emergency stoppages but also from fears regarding the economic effects presumed to result from large-scale bargaining. Their arguments run in terms of a reduction in competition, the discouragement of mobility, the alleged hardship on the smaller firms in the industry, the stimulation of ever-higher costs and prices, the open encouragement to governmental intervention. On the other side, others have argued that the term "monopoly" frequently used in this connection is inappropriate, that wages and costs are not pushed up any higher in multiemployer bargaining than in other forms of bargaining, that competition is real and intense in the industries which have multiemployer bargaining, that local legitimate interests are well protected, that smaller firms have more bargaining power, and that numerous positive advantages accrue in multiemployer bargaining, with the result that this is a form of bargaining satisfactory to most of the parties which engage in it. But, as indicated in the opening sentences of this section, the pros and cons of the economics of multiemployer bargaining are not relevant to a discussion of the handling of emergency work stoppages.

Postscript

The foregoing recital of experience and arguments bearing on the central problem of the report—the protection of the freedom of the parties to negotiate agreements satisfactory to themselves while minimizing or eliminating stoppages which imperil the national health and safety—do not lead to a direct conclusion that a single method has yet been devised which furnishes an unerring remedy.

When a work stoppage jeopardizing the national health or safety is threatened or actually takes place, a variety of courses of action can be initiated. These carry a price in loss of freedom to the parties.

The summum bonum is to be able to settle these disputes before they reach a showdown. Waiting periods, mediation, and fact-finding have become accepted devices, but even these, when required by law, create new situations which can prolong disputes.

The report attempts to deal with the various devices and procedures which have been used and recommended. It shows what has been accomplished and analyzes the problems in proposed solutions and remedies.

Experience with all devices which add to the free collective bargaining of the parties is that such methods and procedures are indeed used, because the parties are generally law abiding and they also know that until they are used they do not have to pay the potential losses of a work stoppage. The multiplication of delays and procedures can therefore stretch out disputes and postpone the day of the hard decision which involves losses to the parties which may be as hard to bear as losses to the public. If, after these extensions and assists, the parties are still unable to take a proposal or recommendation which would by then be available, a method of continuing operations has to be contrived. Though there must be time for negotiation and for an earnest consideration of the issues, any arrangement which destroys

or even weakens the motivations toward voluntary agreement is at best only a stopgap and at worst can lead to ever greater involvement by the Government in the determination of wages and the conditions of employment. Still there are times and circumstances when stoppages cannot be permitted. Whether it is wiser to legislate against any possible contingency or handle genuine crises on an ad hoc basis is a decision of the greatest import. Government by law would seem to favor the first of these alternatives, but experience suggests that what is definitely known can be more certainly anticipated and discounted by one or both parties and thus weakening the effect of intervention. But even ad hoc action requires the existence of the power in the Chief Executive and/or in the Congress to interfere with the exercise of private rights where such interference is found to be necessary in defense of public safety.

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